UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	Title III
The Financial Oversight and Management Board for Puerto Rico,	)	
	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*,	)	June 6, 2018
Debtors.	)	

Siemens Transportation Partnership Puerto Rico, S.E.	)	Docket No. 3:18-AP-030(LTS)
	)	*in 17-BK-3567(LTS)*
Plaintiff,	)	
v.	)	
Puerto Rico Highways and Transportation Authority, *et al.*	)	
Defendants.	)	

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH DEIN

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For The Commonwealth of Puerto Rico, et al.:	Mr. Timothy Mungovan, PHV Mr. Paul V. Possinger, PHV Mr. Brian Rosen, PHV Mr. Ehud Barak, PHV
For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
Fee Examiner:	Mr. Bradley Williamson, PHV Ms. Katherine Stadler, PHV
For Official Committee of Unsecured Creditors:	Mr. Luc Despins, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority and Puerto Rico Electric Power Authority:	Mr. Nathan Haynes, PHV Mr. Arturo Diaz, Esq. Ms. Katiuska Bolanos, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Ms. Suzzanne Uhland, PHV Mr. Luis Mariani Biaggi, Esq. Mr. William Sushon, PHV
For Ad Hoc Retiree Committee:	Mr. Robert Gordon, PHV Mr. Landon Raiford, PHV Mr. Hector Mayol Kauffman, Esq.
For the COFINA Agent:	Mr. Joseph Minias, PHV
For the Government Development Bank:	Mr. Oreste Ramos, Esq. Ms. Giselle Lopez Soler, Esq.
For Siemens Transportation Partnership Puerto Rico:	Ms. Claudia Springer, PHV Mr. Andrew Soven, PHV Mr. Albeniz Couret, PHV

APPEARANCES, CONTINUED:

For Banco Popular de Puerto Rico: Mr. John Dorsey, PHV

For Santander: Mr. Nicholas Crowell, PHV

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I N D E X

San Juan, Puerto Rico

June 6, 2018

At or about 9:39 AM

* * *

THE COURT: Again, buenos dias. Welcome, counsel, parties at interest, members of the public, press and those observing here and in New York and the telephonic participants. It is always good to be back in San Juan. I look forward to hearing of progress in the Title III proceedings and of the work of PREPA and other government constituencies in strengthening the provisions of necessary civic operations and services here in Puerto Rico in the course of status reports and remarks in this hearing.

I remind all of you who are attending here or listening to the proceedings that, consistent with court and judicial policies and the Orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source, or outside repository of information, nor to record any part of the proceedings.

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Anyone who's observed or otherwise found to have been texting, e-mailing, or otherwise communicating with a device from a courtroom during a court proceeding will be subject to sanctions, including but not limited to confiscation of the device and denial of future requests to bring devices into the courtroom.

Now, I was pleased to see from last night's motion filing that there is a settlement in principle of the Commonwealth-COFINA dispute. This is an enormously significant development that marks a great step forward in these Title III proceedings.

Of course the settlement in principle is subject to negotiation of documentation, and any settlement of this dispute is subject to Court approval following disclosure, notice, and full opportunities for objectors to make themselves heard. But the mediation team and the mediation participants deserve our acknowledgment and thanks for this very significant progress.

I assume that the case status reports will start on this note. And who will be speaking to this issue?

Thank you.

MR. ROSEN: Thank you very much, Your Honor. Brian Rosen, Proskauer Rose, on behalf of the Oversight Board.

Your Honor, that was actually going to be about a

minute down the way, but if you'll allow me just to move forward on some other things first. Your Honor, on April 19th and 20th, the Board certified fiscal plans for six entities; the Commonwealth, PRASA, PREPA, GDB, HTA and UPR.

And such certifications were the culmination of months of analysis and development of information by the Title III debtors, the Oversight Board, the government and the respective professionals. The certifications were made during public hearings with the full -- excuse me, the full opportunity for people to be heard in discussion, and the fiscal plan served is the foundation for the framework for the plans of adjustment that are under development.

On May 16 and May 15, Your Honor, the mediators hosted information sessions in New York which allowed for the presentation of those fiscal plans, and for the Board and the government to respond to any questions that creditors had. This lasted two full days, Your Honor, and we believe that it was quite productive.

Not withstanding those certifications, Your Honor, and as the Board has, and its representatives have repeatedly stated, the fiscal plans are living, breathing organisms which are subject to change based upon facts and circumstances.

And as reported, Your Honor, the Board and the Commonwealth continue to engage in dialogue with respect to potential modifications to the fiscal plans so that the needs

of the government and the means for implementation to get to the goals of the fiscal plans can be implemented.

As the Court is aware, the next step in this process is the formulation of the respective budgets. This is currently being undertaken and the Board is very hopeful that it will be completed in the near future.

The conclusion of or the certification of the fiscal plan process has allowed us to recommence our discussions with individual creditors, and through the use of the mediators, to actually have a productive dialogue with respect to moving forward on plans of adjustments or other qualifying modifications in the Title III and the non-Title III entities. We continue to work with the mediators to frame the issues, and whether it is in a formal mediation process, Your Honor, or something informal.

Your Honor, against the backdrop of this -- I apologize -- there are several matters which remain in litigation. As the Court is aware, yesterday there were several things heard by the First Circuit from this Court. Two decisions, Your Honor. Specifically, the Peaje decision, as well as the Court's decision in connection with the PREPA Relief from Stay Motion.

Likewise, there are other matters which the Court still has under review, which will frame some of the issues which will allow us to go forward in connection with those

discussions with the individual creditors.

Your Honor is correct, yesterday there was the announcement of the preliminary resolution of the COFINA-Commonwealth dispute. And we applaud all of the efforts of the mediators and the two Board agents in reaching that preliminary understanding.

We support the urgent motion and the relief requested in that, Your Honor, to allow the parties to try and reach definitive documentation on a settlement so that the parties can then consider how to move forward with respect to a plan of adjustment for COFINA.

THE COURT: Now, the urgent motion didn't include a specific proposal as to objection and reply dates. And so I had in mind to enter an Order setting Monday as the objection deadline and Wednesday as a reply deadline. I'll ask you and anyone else who wants to speak to this.

Mr. Despins, would you come to the podium?

MR. DESPINS: Good morning, Your Honor.

THE COURT: Good morning.

MR. DESPINS: Pleased to be here under these circumstances.

THE COURT: Yes.

MR. DESPINS: So the committee, as the Commonwealth agent, is a joint movant in that motion. We did not put a deadline, but the deadlines that you provide are absolutely

acceptable to us. And I can speak for the COFINA agent, that it will be acceptable to them as well.

THE COURT: Thank you. And I do have a note that Mr. Minias and Ms. Uhland -- actually, Ms. Uhland wanted to speak about GDB. That Mr. Minias is in New York for the COFINA agent and wanted to be heard.

MR. MINIAS: Yes, Your Honor, Joe Minias from Willkie Farr Gallagher on behalf of the COFINA agent. Those dates for the objection and reply are certainly fine with us.

We'd like to express our sincere gratitude to the Court, to your clerks, to chambers and to the mediation team for all the time and effort spent with us these past few months, and of course to Mr. Despins and his constituents for all of his hard work to get to this important stage in the case.

THE COURT: Thank you.

MR. ROSEN: Your Honor, I will defer to Ms. Uhland a little bit later on for a discussion of the GDB.

Your Honor, as you are aware, previously there was a bar date set for May 29th. And pursuant to an Order of the Court, that was extended for a 30-day period to June 29. And subsequently, what we did, Your Honor, is we have included additional radio spots, publication in local periodicals, and we have kept open the collection centers throughout Puerto Rico to allow for more proofs of claim to be filed.

And during the intervening week of May 29 to today, approximately 3,000 more proofs of claim have been filed, bringing us to a total of approximately 17,300 proofs of claim. With respect to those, they can easily be -- and they total, Your Honor, approximately 46 billion dollars.

They can be, however, categorized into several main categories, three specific, Your Honor: Bonds that have been filed of about 38 billion dollars, tax refunds of approximately 400 million dollars, and pension related or retiree related claims of about 3.4 billion dollars.

There are additional litigation claims, Your Honor, of about an additional 2.8 billion dollars, but the lion's share of the 46 billion dollars, Your Honor, are essentially those three categories I referred to. And we think, therefore, they will be easily reconcilable, because they will -- in the bond situation, we obviously know with the bonds that have been issued, Your Honor, and the tax refund situation, we believe that will be reconciled through the administrative processes of the government, likewise with respect to the pension retiree existing claims.

At the same time, Your Honor, the Board, together with AAFAF, have been engaged in bringing on claims reconciliation to assist us in that process. We did an RFP, Your Honor, and approximately ten people submitted interests.

We interviewed several of them, and we are about to

make a selection with respect to those claims agents. And we think that will greatly facilitate and expedite the process with respect to the non-three categories that I referred to previously.

I know that on a prior appearance, Your Honor, Mr. Despins had mentioned about an ADR process for the resolution of those additional claims. We have been working with Paul Hastings and the Creditors' Committee, as well as with AAFAF, to develop a process that will fit into the concept of the plan of adjustment, which will provide for a low discovery, low litigation type of approach. It will allow for offers to be going back and forth, and if, in fact, there is no resolution, an expedited consideration by an appropriate tribunal to consider those claims. But again, Your Honor, we are anticipating that we will include that in the plan of adjustment after approval by all the parties.

THE COURT: Thank you.

MR. ROSEN: Your Honor, the next item is -- I'll say it with respect to the GDB that you've referred to. Your Honor, as you are aware, this is something that was before the parties pre-hurricane. And, in fact, there have been discussions and, in fact, an RSA had been reached in 2017.

It had been subsequently amended or amendments have been entered to extend the period pursuant to which it would be considered. However, based upon the facts and

circumstances, the parties then revisited the issue on the merits, and they have agreed to additional terms which are currently being documented.

And Ms. Uhland, who is sitting in the New York courtroom, will address some of the specifics associated with the GDB proposal.

THE COURT: Thank you.

Ms. Uhland, would you come to the podium, please?

Oh, I'm sorry. Well, after we talk about -- actually, it makes sense to talk about PREPA before we talk about GDB, because then the Siemens issue is next after GDB. So would you speak about PREPA --

MR. ROSEN: I'm actually going to defer to Mr. Haynes over here, Your Honor, from Greenberg, who will speak to the specifics of PREPA.

THE COURT: Thank you for your patience, Ms. Uhland. Mr. Haynes.

MR. HAYNES: Good morning, Your Honor.

THE COURT: Good morning.

MR. HAYNES: Nathan Haynes from Greenberg Traurig for AAFAF, and it's fiscal agent for PREPA. Your Honor, since our last update, while there is still much work to be done, PREPA has made significant progress in its post-hurricane recovery efforts.

Power has been restored to some 99 percent of the

customer base. Generation is at levels that are at 90 percent of those in 2017. 82 percent of the 103 larger transmission lines are now back in service. And as of May, billing has been reestablished to approximately 87 percent of the customers.

Your Honor, PREPA also continues to work to secure FEMA financing and to access available insurance proceeds. On the liquidity side, PREPA has a cash balance of 240 million dollars. 150 million of that is current borrowings under the Commonwealth loan.

Since the initial February 300 million drawdown on that loan, PREPA has made mandatory repayments of 149 million. The revolving feature of this loan terminates in June, the end of June, and so we expect to draw down that 149 available liquidity in advance of that deadline. Unless the revolver is extended by further government action, any mandatory prepayments after that date will be permanent prepays down on the Commonwealth loan.

PREPA's operational cash receipts are currently servicing the majority of its operational expenses. The average weekly collections over the past four weeks has been 64 million, which is above budget.

Your Honor, PREPA continues to assess its short and medium term liquidity needs. We're actively exploring third-party financing options, and we expect proposals from

those parties in the coming weeks. We continue to believe that PREPA has sufficient operating liquidity in the near term, and we don't anticipate seeking additional or replacement financing within the current budget period ending on August 10. And that, Your Honor is the current update of PREPA.

THE COURT: Do you have anything to tell us about PREPA's work to strengthen its own emergency response capabilities now that we're going into the hurricane season? Is there anything that we can use in this forum to let the people know as they wonder what the weather is going to do?

MR. HAYNES: Well, PREPA -- as a part of its annual processes, PREPA annually prepares for the hurricane season. Those preparations are well under way. We are obviously coordinating with FEMA and the Army Corps of Engineers with respect to the processes that need to be put in place, but PREPA is well on top of the situation. And we are in hurricane season again, and that fact is not lost on management.

THE COURT: So I would assume that there is a lot of learning from the experience of last year and it's a different order of magnitude and intensity of preparation?

MR. HAYNES: That's correct, Your Honor. And I think also there's the added layer of complexity that we're still fixing things and there's still damage we're fixing and

transmission lines we're fixing, so that adds another level of complexity on it. But we feel that that process is in hand and being dealt with appropriately.

THE COURT: Thank you.

MR. HAYNES: Thank you, Your Honor.

THE COURT: And now, Ms. Uhland, will you come to the podium in New York?

MS. UHLAND: Thank you, Your Honor. This is Suzzanne Uhland from O'Melveny Myers on behalf of AAFAF.

THE COURT: Good morning.

MS. UHLAND: As Mr. Rosen noted, the GDB and AAFAF submitted an RSA last May, May 17, for approval to the Oversight Board as a qualifying modification and that was certified. That RSA has the support of approximately 2.6 billion in principal amount of claims out of approximately four and a half billion of claims against GDB.

That group includes more than 300 on-island bondholders, and an additional 50 on-island credit unions, as well as the ad hoc group of GDB public bondholders, which hold over a billion dollars of bond claims.

The GDB restructuring, if you will, really has two parts. First, it has the Title VI components, which were restructuring bond claims, which include both public bonds and certain deposit claims, which are loans under Puerto Rico law.

As I'll get to in a minute, the number of deposit

claims has been greatly reduced by virtue of the offsetting mechanism that's part of the fourth amendment. That's the Title VI component. In addition, there are claims of public corporations against GDB for their deposits, and those are being resolved through a settlement that is being effected through legislation that's being enacted in Puerto Rico on the GDB restructuring.

So first, the qualifying modification in the Title VI process. What the Title VI process provides is that the current bond claims against GDB will be restructured through an exchange where they will receive new bonds of approximately 55 percent of the face amount of their old bonds, and these new bonds will be issued by a new entity to be formed under the GDB Restructuring Act. And it's going to be called the GDB Debt Recovery Authority.

Separately, the public corporation deposit claims that are being settled through the GDB restructuring act will be issued beneficial interest in a newly formed entity called the Public Entity Trust, and the primary asset of that trust is the net claim of GDB against the Commonwealth. In other words, while the Commonwealth had deposits at GDB, its loans from GDB exceeded the amount of its deposits. So on a net basis, there's a claim against the Commonwealth of about 905 million dollars.

As noted, the RSA was amended after the hurricanes

and really we needed to do two things: First, we had to move out the milestone dates because of the obvious disruption and delay; and second, we wanted to provide some relief to the municipal entities, the municipal depositors.

So one of the primary changes to the RSA that was negotiated after the hurricane and is set forth in the fourth amendment is to allow for the full offset of the municipalities' deposits against their loans. This is one reason that there are very few municipality creditors left holding deposit claims in this modification. So there are very few depositors remaining.

In order to implement these amendments to the RSA as well and to make some other amendments, the GDB Restructuring Act is currently being modified by the legislature in Puerto Rico and we are awaiting its approval. On May 8th, 2018, the Oversight Board recertified this amended RSA as a qualifying modification under Title VI.

So now, where do we go from here? As I said, the public entity settlement is conditioned on the effectiveness of the Title VI, but is being addressed through the legislation. The Title VI itself is moving down the path toward solicitation and court approval.

As we set out in the informative motion, we are proposing, GDB and AAFAF are proposing to the other RSA parties that we set forth the following dates for our path

forward with the RSA: That we will submit substantially complete drafts of the solicitation documents to the Oversight Board by June 22nd; that we will launch the solicitation on July 5th.

This means we will include an offering, an informational document and the ballots will be mailed on July 5th. We intend to initiate the Title VI proceeding the day after launch, so -- sorry. We're going to mail July 5th and initiate the Title VI proceeding on July 6. And then provide that the votes come back on August 6.

The Court's role in Title VI is to determine whether the requirements of PROMESA 601 have been satisfied, and to focus on three things: One, the pooling and classification, including classification as to whether an unsecured claim is a claim as opposed to a property right; the solicitation and the tabulation.

Given that range of sort of a rather narrow focus of the Court, we set out what we think is an appropriate schedule in our informative motion, triggered off of the initiation date of the Title III. And that's again set forth -- our assumption is that from the date that we file and initiate the Title III, we will include a motion to approve the qualifying modification.

THE COURT: May I just interrupt you there with two things? As I read your proposed schedule, which doesn't have

at this point an outside date for court approval, but your schedule would appear to contemplate the holding of hearings and substantive work toward resolution in the latter part of August, August 20th and forward.

The Court is not available for hearings and proceedings between August 24th and Labor Day. So we'll need to deal with that scheduling. That leads me to suggest that we consider whether combining whatever hearing is necessary with the September Omni, which is the week of September 10th, might be an approach that would promote at least some efficiency in terms of people coming together. So I would look for your thoughts on that.

The second thing is that as you know, we have with Siemens the issue outstanding, which I'm assuming falls into that category of property versus loan that you were talking about. And I'd be grateful for further explication of your thinking as to whether that assumption is correct, whether you would anticipate building into this process any necessary discovery in anticipation of and adjudication of the loan versus property issue on the basis of Puerto Rico contract, property, banking law, local law, and the extent to which you think there are any other parties that might be making similar types of contentions and where we would put any evidentiary proceedings that might be necessary.

MS. UHLAND: So Your Honor, I think with that, with

the Court's schedule, we should revise the proposed timetable to -- right now we have what I'll call a 45-day period. And so with the Court's schedule, it would be more like a 60-day period.

THE COURT: Yes.

MS. UHLAND: 60, 65. So the way we envision the resolution of these issues is similar to an either -- you know, just consider it a contested matter with discovery or a plan -- a confirmation hearing with discovery. So we would like to work in, within that 60-day period, an appropriate, you know, period for discovery, if necessary.

What we would like to do, and it is our view, and you are correct, we were looking to resolve any entity that believes that they have a property claim instead of -- a property right instead of a creditor claim, Siemens or any other party that believes they are similarly situated. We would like them to address them in the context we believe that's a classification issue that we believe should be addressed in the context of the resolution of the Title VI.

So perhaps with those thoughts in mind and the Court's comments, we can provide -- you know, we can work through now or we can confer with the parties and try to come up with a revised proposed timetable that incorporates some limited discovery on that discrete issue.

THE COURT: I think some work offline on a revised

proposed timetable would probably be an appropriate and efficient response, although in the next agenda item, it will be important to hear Siemens' conceptual response to this framework that we've talked about.

But I think, and I just want to confirm with you, that I hear you saying that you are -- you anticipate real discussions leading to an appropriate structure for discovery that the -- either that the parties agree is necessary or to the extent there is a dispute about that, queuing up something to manage so that a proper discovery process can be managed in advance of the hearing in connection with the Title VI, and that that hearing will include at a minimum a determination as to whether the funds in question can be classified as a loan and therefore be resolved through the Title VI.

And I think a corollary to that determination would be what is the precise nature of the rights, if they're not a loan, and that would subsume in your view the issues that have been raised in the adversary as to GDB and that escrow account?

MS. UHLAND: Yes. That is all correct, Your Honor.

THE COURT: Thank you for clarifying that for me.

MS. UHLAND: So with that, Your Honor, unless the Court has any questions, you know, that completes what we wanted to address with the Court today.

THE COURT: Thank you. Give me just one moment to

look at my notes.

That covered all the questions that I had for you. Thank you, Ms. Uhland.

MS. UHLAND: Thank you, Your Honor.

MR. DESPINS: Your Honor.

THE COURT: Yes, Mr. Despins.

MR. DESPINS: If the debtors --

THE COURT: I need you at a microphone.

MR. DESPINS: Thank you, Your Honor.

I was asking the question, if the debtors are done with their state of the union report, we just need to address a few points on behalf of the Committee that have been discussed. One of them is to give you a report on the tutorial sessions that we had on the claim process.

Remember that you had asked about these tutorial sessions and the proof of claim process. Just, I want to give you a brief report on that. And we -- in Puerto Rico, on the island, they worked very well. We did it in four cities, and they were well attended. Dozens of people showed up. That worked well.

On mainland, not so successful. Meaning that we shut it down after the first one because of lack of interest. But I wanted to make sure Your Honor knew that.

THE COURT: Thank you for undertaking to make that available.

MR. DESPINS: And on COFINA, Your Honor, I just want to spend two seconds on that to set the stage. You will remember that under that stipulation, Commonwealth-COFINA dispute, that on the COFINA side of the house, the way the settlement needs to be implemented is through a plan of reorganization that the Board obviously is the only party that can propose that.

So the purpose of the 60 days is to go through not only with the Board, but with a number of people, the COFINA creditors, obviously the Board, and of course the COFINA agent will be centrally involved in that process as well to go over all the execution issues. As you can imagine, you're familiar with -- obviously very familiar with the litigation in the COFINA case --

THE COURT: Yes.

MR. DESPINS: -- regarding junior, senior acceleration. All of that is something that needs to be addressed by the Board through this process. So we wanted to make sure you knew that.

THE COURT: Yes.

MR. DESPINS: That's why the 60 days to try to firm up a lot of these issues is necessary. Whether 60 days will be enough or not, we hope so, but we -- I've learned a long time ago in bankruptcy that you always have to underpromise and overdeliver.

So there's a lot of work that remains to be done. I want to make sure that the constituents and the Court know that. We are not at the finish line yet.

The last point I want to address briefly, Your Honor, is GDB. Just a big yellow light on GDB. I'm not going to argue the points, Your Honor, but the Committee has been in discussion obviously with -- discussion with AAFAF on this.

There are several issues as to whether this is a -- whether the committee would sign off on this. And one of the concerns is that there are multiple governmental entities involved in this. For example, Ms. Uhland described that the Commonwealth was a depositor at GDB. So was PREPA. And the question is who is deciding all these things. It's a bit reminiscent of the debt refinancing issues where you have one group deciding the issues that affect all these debtors.

There are also releases that are sought in this GDB plan or -- not plan, but proceeding, releases for directors and officers. And I don't want to be dramatic about this, but I was reading in the press yesterday that the governor described Puerto Rico in the past as a big Ponzi scheme. Not my quote, his quote. And in that context, we have to be really careful about all of that.

And therefore, what I'm saying is timing wise, Your Honor, I don't want to remain silent and Your Honor to think that this will be a very dry procedural matter. It may be.

And that's not what we want to do, but it may be that the committee will challenge the use of Title VI for this process, and that's going to be a much broader proceeding than just what was described, Your Honor.

So I want to make sure you are aware of that. We don't need to debate that now, but I want to make sure that's on your radar screen.

THE COURT: And you say you are directly in discussions with AAFAF about this?

MR. DESPINS: Yes.

THE COURT: And so I will assume that a revised timing and procedural proposal will reflect, at a minimum, the existence of those issues and appropriate management techniques for the proper consideration of those issues. If Ms. Uhland wants to add anything, I would invite her to come to the podium in New York.

And I see she's on her way, so we might as well just have this confirmed here. So stay at the podium please, Mr. Despins.

MS. UHLAND: Your Honor, we need to -- I think we need -- we are having discussions with the Creditors' Committee. We would love to have the Creditors' Committee support the GDB Title VI.

As a threshold issue, we don't know that the Creditors' Committee, frankly, has standing to get into the

Title VI of the GDB. That's something that we do not concede. And so -- but we do want to continue to work with them. We would like their support.

As far as a mechanism to resolve the dispute and to reflect their view on the -- their potential objection on the timing of the schedule, what I would propose, Your Honor, is why don't we continue our discussions to obtain their support in the near term. And if we can't do that, then come up with a proposal for, you know, a schedule to resolve our issues in front of this Court.

THE COURT: Thank you.

MR. DESPINS: Thank you, Your Honor.

MR. ROSEN: Your Honor, Brian Rosen again on behalf of the Board. I rise only with respect to the comment about the COFINA-Commonwealth dispute.

As I mentioned we, the Board and its advisors, are actively engaged in discussions already with members of the COFINA creditors' body, and we are looking forward to now taking preliminary settlement and moving that towards a plan of adjustment. We do not anticipate waiting until the expiration of the 60 days. We want to use every day that's available to us.

THE COURT: I'm glad to hear that.

MR. ROSEN: Thank you, Your Honor.

THE COURT: Now, did counsel for Siemens wish to

speak to the Title VI structure versus Title III issue?

MR. SOVEN: Sure. Andrew Soven from Reed Smith for Siemens.

Your Honor, it sounds like in the last week since we were before Judge Dein, there may have been a little bit of progress in terms of what's sort of being offered to us in the context of the Title VI, but I still think we're not there yet.

I mean, the case was filed in the Title III proceeding. It doesn't seem as if there is a compelling argument that the case cannot be heard in the Title III proceeding. And although they've argued in a Motion to Dismiss that the case belongs in a Title VI proceeding, it would be our preference as of today to have that motion ruled on to see if they're right or we're right, or if the motion is ruled on in such a way so that a decision can't be made on the initial -- you know, on a Rule 12(b)(6) motion.

But as it stands now, you know, I heard something about lack of standing for the Creditors' Committee. I heard that there may be an opportunity for discovery and there may be a hearing at some point in the Title VI process, but none of that really has been -- has been put down specifically in the motion to inform or in what I've heard today.

So I mean, we're here talking about this Title VI issue because GDB, and to some extent the other parties to the

RSA, included Siemens' claim in the RSA, that was a choice that they made, which they're entitled to make, but which we're entitled to disagree with. And I have not heard yet a compelling reason for me as to why our position on that cannot be heard in the Title VI. At the same time -- in the Title III.

At the same time, we have every interest, as I told Judge Dein last week and I'm telling you today, in an expeditious resolution no matter where the case is heard. So the schedule we proposed said, you know, briefing would essentially be done in the next two or three weeks, by July 25th, by agreement.

If the Court wants, it can hear argument. If the Court doesn't want, it can decide the motion. That argument, they are now agreed in principle to some discovery. We put forth in the proposed orders submitted last night what exactly that discovery should be, and it's quite limited. And, you know, under our -- you know, under our argument, the case in the Title III proceeding can be decided 60 days, 90 days, certainly by the end of the summer, if not before, and so that remains our preference.

THE COURT: Well, I hear you on that, and I saw that reflected in your filing yesterday afternoon. As you know, I have -- there's one of me, and I have quite a queue of issues that are urgent and/or perceived by their proponents to be

urgent, and so a concern that I have always is the most efficient way of resolving an issue.

And to the extent anybody wants to jump to the front of the queue, I have to ask myself and them, why should you be in the front of the queue when other people have been waiting for things. I wish I could --

MR. SOVEN: Yes.

THE COURT: -- decide everything instantly, but I've found that I can't, miraculously enough, and so I have to organize my time properly. And so since the -- there seems to be very real momentum, both procedurally and for business, governmental, restructuring reasons on the Title VI, it certainly sounds to me as though that is very much on a track to happen in the near term and in the time frame in which you would put your aspirational accelerated decision of this issue within the Title III.

And Ms. Uhland has recognized the need to provide for a discovery process and for evidentiary proceedings in connection with the issues, has acknowledged that local law will govern the determination of the property and loan issue, which is another concern that you raised in yesterday's filing.

My request to you is to engage in very serious and more concrete discussions with AAFAF to come up with a sufficiently comprehensive process to do this within the Title

VI rather than trying to have a separate accelerated track for your motion practice in the Title III while we're also queuing up the Title VI.

And as I said to Ms. Uhland, late summer is not a time when I can entertain and promise to turn around very quick decisions.

MR. SOVEN: Understood. I mean, would Your Honor anticipate that we would meet and confer again, and hopefully maybe with greater success, and then -- what is the process in terms of getting back to the Court?

THE COURT: Well, what I spoke about with Ms. Uhland was that she was going to organize the necessary consultations, and then there would be a revised proposal both in terms of timing and in terms of the particulars of proceedings.

And so if you are not fully on board with that proposal, I would expect that that would be accompanied by an articulation of the objections that remain.

MR. SOVEN: Thank you.

THE COURT: Thank you.

And so I think procedurally and for housekeeping purposes, since I am directing you to go down this procedural track, I am going to enter an Order denying without prejudice the pending Motion for Expedited Motion Practice on segregation of the money within the Title III. And I will

leave it to you and the other parties to the Title III to decide whether you still want to keep to the briefing schedule that was proposed for the motion to dismiss in the Title III, or hold the conclusion of that in abeyance pending the Title VI. That might be a way to save some, you know, money and effort.

MR. SOVEN: Just one final point, we had filed a motion to preserve the funds.

THE COURT: Yes.

MR. SOVEN: And as of last week, essentially what constituted an oral order from Judge Dein about that, or at least confirmation that the funds would have been preserved at least through June 28, because at least as of last week, that was an aspirational date for a resolution, even though that didn't turn out to be realistic. I mean, we would like that extended, I guess, if that's the right word. We would like confirmation that the funds will be preserved and remain intact pending final resolution of Siemens' claims, wherever they're heard.

THE COURT: So let me invite Ms. Uhland back to the podium in New York for that.

Ms. Uhland, will there continue to be a standstill on disbursements from the GDB and application of GDB funds pending the final resolution of the RSA qualifying modification motion practice?

MS. UHLAND: Are we asking -- let me ask, is the position -- I'm not quite understanding what I'm being asked to confirm. Can you repeat that?

THE COURT: I heard Siemens' counsel saying that they are concerned that there be a specific undertaking not to divert or otherwise invade the 13 million dollars until the property rights versus loan issue is resolved, particularly if what we're looking at is resolving that in the context of the Title VI. And there had been a specific undertaking before Judge Dein regarding the period from now until June 28. And so he's asking for a comparable undertaking through the conclusion of the -- the resolution of the issue in the context of the Title VI.

MS. UHLAND: Why don't we say that it would be the earlier of that date or September 10th, in case there's some -- something goes off the res.

THE COURT: All right. Well, why don't you -- that's the proposal, and if you will follow up on that with them in your discussion of mechanisms, and if it's acceptable, include that in the scheduling and mechanism proposal?

MS. UHLAND: All right. Will do, Your Honor.

THE COURT: Thank you very much.

MS. LOPEZ: Your Honor, briefly. Giselle Lopez on behalf of the GDB. I was under the impression that you wanted to discuss the merits of the preservation of funds request,

but if you're only discussing calendar and briefing, then we don't have anything to add.

THE COURT: I did not expect to hear merits arguments on that motion. And if the parties are content to push it out until September or earlier, preservation of the -- earlier resolution of the RSA, it seems to me it's not necessary.

MS. LOPEZ: Right. That's what we wanted to make clear. Thank you.

THE COURT: Thank you very much.

All right. The next item on the agenda is the report of the fee examiner.

MS. STADLER: Judge, as you mentioned -- oh, I'm Katherine Stadler of Godfrey & Kahn on behalf of the fee examiner, Brady Williamson.

THE COURT: Good morning, Ms. Stadler.

MS. STADLER: Good morning. As you know, we filed a status report on the second interim fee applications covering the period from October 2017 through January 2018.

There has been some progress since the filing of that report about a week ago. We are in productive talks with counsel for the Board regarding resolution of issues identified in their first interim fee application, and we have a meeting scheduled next week with some of the applicants for the second interim fee period that have been held over for consideration at a later date. So those are new developments.

I wanted to make a couple of notes. On the confidentiality issue, we have continued to have a number of firms express concern that materials they submit to the fee examiner are not protected. In other words, that they could be charged with violating mediation confidentiality by submitting the materials in an unredacted form to the fee examiner.

The fee examiner has taken the position that the existing Orders prevent any kind of violation of mediation confidentiality through the submission of materials to the fee examiner, and that issue is continuing to be discussed among the fee examiner and some of the applicants.

There have been no objections filed to the fee applications recommended for approval today. We filed and submitted to chambers yesterday an Order that incorporates the recommendations of the report. That Order has been circulated to all of the professionals and I am aware of no objections to its entry.

The fee examiner would like to say a few words when I'm finished, but I'm prepared to answer any questions you have about the report or the fee process.

THE COURT: Well, the questions that I have go to the chronic concerns and cost containment issues that are flagged in the fee examiner's report, which includes a component anticipating a potential application by motion for specific

cost containment measure requirements.

I would like to hear a bit more about those potential measures and the thinking at this point. And there are some additional potential measures that the Court would like to have considered for possible formal proposal in that context, because, as the report notes and as I've previously noted here in open court, the careful use of resources is required as we work through these unprecedented and highly complex problems.

And I've made some specific instructions to avoid duplication on the record and to avoid overstaffing and overattendance. And I see in hearings that the attendance issues have been taken to heart, to an extent, and that I appreciate the current combined fees accrued so far I think do warrant additional comment, and also the consideration of compulsory cost control measures.

So are you the right person for me to have that discussion with or is it Mr. Williamson?

MS. STADLER: I think I can talk about them, and he may have a few general concepts to address in that regard.

Your Honor, you're referring to the bullet point items on pages 15 and 16 of the report?

THE COURT: Yes.

MS. STADLER: So those recommendations, and as you know, backing up to the March 7th hearing and the reporting cycle that led up to that, we had a couple of -- the fee

examiner had a couple of observations about the efficiency of the process that he sort of previewed for the Court on March 7th, and then subsequently embodied in a motion to amend the fee examiner Order which is now pending.

I would characterize that motion as cleanup and perfection -- perfection to the extent that's possible of the fee examiner Order now that we have had a chance to see how the process plays out.

These measures that are suggested here in the report on pages 15 and 16 are similarly suggestions, concepts, ideas that the fee examiner would like to vet with the professionals and continue to discuss. I'm sure he would be happy to have the Court's insight on any of them and any other measures that the Court deems appropriate.

But this was in no -- by no means an attempt by the fee examiner to start dictating new blanket -- or requirements that were non-waivable or couldn't be -- you know, exceptions could not be approved. But he thinks that a couple of these things have the potential for real cost savings, and to create more incentives for the kind of conservative staffing measures that he is hoping to see.

The intervention requirement, again, the concern there, and Mr. Williamson, I'm sure, would be happy to discuss it in a little more detail, but the concern there is especially with the potential for another Creditors' Committee

or Retiree Committee for the PROMESA retirees -- I'm sorry, for the PREPA retirees, the proliferation of interventions chiming in, we agree, joining, and a concern that there is not enough effort being made to consolidate arguments where that is appropriate and allow parties who have similar positions on issues to submit materials together, rather than each individually having to submit their own unique perspective on every single issue, that is a place where the fee examiner thinks that there's a potential for cost savings.

The holdback suggestion, and I know this is a cause for concern for a lot of professionals, so I want to soothe everyone's concerns by saying this is a proposal that the fee examiner has made primarily because he wants to make sure that professionals are all filing interim fee applications, more or less at the same time.

The reason for that is, speaking directly to the issue of duplication and overlap, if the fee examiner is looking at a specific case or issue or briefing cycle and trying to determine if there was duplication and overlap in a given fee period, it is very hard to do that without knowing what everyone has charged for that particular activity or brief or argument. And so we really want to encourage people to file their fee applications timely and keep up with the schedule that's set forth in the Interim Compensation Order. Because if that doesn't happen, we end up with issues that

have to be set over or deferred or kicked down the road. And then you have, you know, a period of time where more problematic billing behaviors can occur in the interim.

So we want to make sure to get the application filed, identify the issues, raise them with the professionals, and come to an understanding about how those issues will be handled going forward so we don't end up with a backlog of unresolved issues that are worse than if we had addressed them as they arose.

THE COURT: So I understand that that is the goal. And just for clarity for me on the mechanics, if such a structure were put in place and a professional was substantially in violation of the deadline set for submission of the interim fee application, then for the following period, the holdback would jump up to 20, 30, 40, 50, whatever the percentage until the next submission is made timely, and then can be trued up in connection with the following period?

MS. STADLER: That sounds reasonable to me, but again, I think I'm hearing a lot of grumbling.

THE COURT: I'm just trying to ask how you're thinking that would work.

MS. STADLER: Yeah, something like that I think.

One thing I do want to mention, because I know people in the room are very concerned about it, there have been a number of professionals that have appealed to the fee examiner

counsel for assistance in facilitating payments.

And there are many professionals who are concerned that not withstanding the existence of the Interim Compensation Order, not withstanding the existence of the fee examiner's reports and recommendations, that the Court's Orders with respect to payment of fees on a interim basis, either under the monthly compensation procedures or the interim compensation procedures, are not being strictly followed.

I want to reiterate to the professionals and for the Court that the fee examiner does not view it as his role to step into the payment queue issue, and that unless there is some instruction from the Court to the contrary, his involvement will end when the recommendations are made to the Court and the Court has approved them through entry of a Compensation Order.

And issues with regard to who is being paid what, at what percentage, are going to have to be dealt with as an administrative matter outside the fee examiner process, because we simply don't have access to the records and information necessary to determine or verify who has been paid and who has not been paid.

THE COURT: And as I recall, it's monthly payments subject to a holdback that is then tied to these quarterly interim --

MS. STADLER: Correct.

THE COURT: -- compensation determinations?

MS. STADLER: Correct.

THE COURT: So, I am not asking the fee examiner to get involved in those cash flow issues. However, to the extent there are cash flow or payment issues that then complicate the fee examiner's efforts to streamline the fee examiner's processes with professionals and in providing input to the Court, there has to be some direct and frank discussion and work as between the payor entities and the professionals.

And I will say here that I would hope that I don't have to see any applications about compliance with the specifics of the payment provisions of the Orders in order to clear those sorts of complicating issues off the table, but if that's necessary, the entities and professionals involved on either side are going to have to, you know, come up with an appropriate application to put the issue before me. I'll hear it if I have to. I encourage you not to make me have to hear that.

MS. STADLER: Thank you.

The last bullet point item that I might address briefly was the limit on individual attendance at events and also case monitoring. We understand from ongoing discussions with counsel for the Board and AAFAF and other interested parties that there has been a concerted effort made since the

issuance of the first interim report to consolidate the process of reviewing the voluminous docket on a daily basis, digesting what's in there and disseminating information to the necessary parties.

Because the fees we reviewed for this cycle ended in January, we haven't had the benefit of seeing the results of that effort, but we understand that it has been undertaken in earnest, and are pleased to see that the docket monitoring concern that was raised appears to be being addressed.

As for the hearing and mediation attendance, and perhaps today's or yesterday's announcement means there is less mediation attendance in the future that we will have to worry about, but the attendance at hearings continues to be an issue.

And the fee examiner has stated standards and guidelines that are in the memoranda that he has issued to the professionals and filed with the Court, and has continued to apply those standards with some flexibility in recognizing that there are always unique circumstances that come up and there are always situations where a person's attendance at a particular event or a person's participation in briefing or a hearing may be justified even if it doesn't rigidly adhere to a pre-established guideline.

So whether there are standards that are articulated and enforced or monitored by the fee examiner or the Court,

the fee examiner would always understand that there is going to be a case-by-case analysis of every single billing issue that arises. And that he would not endeavor to enforce or apply any kind of standards or restrictions or cost-control measures without regard to the realities of this very complex case.

THE COURT: Thank you.

And so to that, let me just air some ideas that I had on my side along these lines. And again, as you'll hear from the way I'll try to articulate them, they're intended to have some aspects of flexibility, and they also relate to the issues that have been raised by the fee examiner.

And so, for instance, as to attendance, I understand that there are principles in the guidelines and in the memoranda that if we were going to take it up a notch, perhaps we can look at it as a presumptive restriction on the number of individuals expected and permitted to attend particular types of activities. And then to the extent any invoices reflect billing above the presumptive limit, the billing entity should provide a confidential submission to the fee examiner with a specific justification for the overattendance.

Along the same lines, with respect to duplication of briefing, that -- to impose a requirement that parties expecting to take identical or substantially similar positions on motion practice collaborate in advance of the submission of

papers and file joint pleadings with short supplemental filings as necessary. To the extent that parties determine that they nonetheless have a need to file separate, full pleadings, they certify that they did confer in advance and, in connection with the billings, submit a confidential, written justification to the fee examiner with the separate pleadings. And that can inform the fee examiner's recommendations and communications to me, but let the party be more candid with the fee examiner than the party could be with me.

One thing that I'm aware of generally in the market is that on electronic research, my understanding is that many, if not most, firms have flat fee contracts with providers. And I understand that there is substantial billing for electronic research services.

And so one potential measure that has occurred to me is requiring disclosure to the fee examiner where there is a flat fee contract and having some presumptive limit of billing for the electronic research to a specified percentage of the monthly flat cost, perhaps capped at a calculable, demonstrable, actual proportion of the costs incurred by the firm. So that if, for silly numbers, if the presumptive limit were one one-thousandth of the monthly flat fee, but it turns out that in actuality 20 percent of the traffic was attributable to this matter, and that could be demonstrated by

a showing of research hours or whatever, that information could be provided to the fee examiner.

And I understand that you're having discussions about receipts as well and whether there's a de minimis threshold below which the receipt concern is not heightened, but you're talking about a concrete threshold at which the concern does get heightened. And so perhaps increasing the transaction costs of not coming with a receipt might be an incentive to coming with a receipt.

So those are the additional concerns that I have had. And so what I would encourage the fee examiner to continue to do is to have the discussions informally, but to also consider formulating a motion after those discussions with specific proposals that would then be subject to filing on the record with a full process for objections, and reply. And then the Court would consider changes.

MS. STADLER: Yes, we will do so.

THE COURT: Thank you.

And so with that, I grant the motion for approval of the recommended adjusted amounts and deferral of the applications that are identified in the Proposed Order as deferred. And I will enter that Order.

MS. STADLER: Thank you, Your Honor.

THE COURT: Thank you, Ms. Stadler.

MS. STADLER: Mr. Williamson will speak.

THE COURT: Yes. Good morning, Mr. Williamson.

MR. WILLIAMSON: Good morning, Your Honor. I will be brief. Let me start first with the four specifics the Court just mentioned. And I think it's important to note that in each of those, including the electronic research, presumptive attendance and the others the Court mentioned, they've already been long part of the dialogue with the professionals. And I think the question which we'll continue to discuss is whether those should be more formalized.

But I think the Court's perception on overattendance and duplication has been well communicated, and more important than whatever we say in our report is what's said from the bench.

THE COURT: So may I just add one thing that I forgot to add when I went through those measures? Another part of my thinking is that to the extent -- if and to the extent that we do impose some specific measures, it would be helpful to the Court, and I think also to the assembled, if the fee examiner could do a demonstrative look back for information purposes at a preceding period or periods to determine the order of magnitude of difference that the measures would have made had they been in place during, say, the first or second period, so that can provide additional information and an incentive going forward.

MR. WILLIAMSON: Thank you, Your Honor. And

actually, on that point, to be quite specific, we noted with respect to electronic research, which can get into six figures, that the amount done dropped precipitously from the first period to the second period. We all know how novel many of the issues are, but with all respect to our colleagues at Lexis and West and all those services, at some point learning that there is no precedent stops. And it's clear there is no precedent for much.

So, Your Honor, we've been at this for two fee periods, eight months, of more than 30 professionals. And while the nature of this process tends to focus on problems, there really is much to be encouraged about.

And foremost I think is the cooperation and consultation between our review process and the professionals' willingness and openness to hear a different point of view, to answer hard questions, sometimes to persuade us that the services rendered were not only reasonable and necessary but essential to making this process work.

So as a result, I hope the report embodied a couple concepts. One is that what we do is as much about prospective practices as retrospective practices. In other words, it's imperfect. We can always get better. And we don't want to simply dwell on the past without applying those lessons prospectively, in which we all hope will be a brief case, but may end up not being a brief case.

The other conceptual point Ms. Stadler and I wanted to drive home I think this morning is that the comments from the bench and the comments on our report are as much directed at the clients as the counsel because ultimately counsel makes suggestions, executes decisions, but ultimately the client makes decisions about intervention, about separate briefs, about cooperative behavior among the professionals.

Another note, if the Court looks at Exhibit A, it will see in the very first line that there's an expense adjustment for $7.86. And the question may arise, why bother with $7.86? And the facile answer is because the rules require it. And that's true. But I think the broader answer, which goes to the review process generally, is that expenses are a tree in a forest. Duplicate attendance are trees in a forest. And our focus has to be both on the trees and the forest. And again, that's why we're looking at broader concepts, like making the process more efficient.

I'll end on this point. I think we've had more than a dozen meetings with professionals. As Ms. Stadler said, we have at least one scheduled for next week. I think we know enough about the process to say that it is working, that it could work better, and will, but we don't see significant changes going forward.

The bullet point recommendations we made, like those we made in the first report, were really a trial balloon. And

we've gotten a response from the professionals and now from the Court, and if and when those should ripen into a motion, we will file it as we have done.

So thank you for your attention.

THE COURT: Thank you very much, Mr. Williamson, and thank you for your work.

And thank you, Ms. Stadler, as well.

And so the next item is the fee examiner's motion to amend the Order with respect to flat fee arrangements and certain other types of billing. We've got 20 minutes allocated on the calendar for that. I will have some questions and I'll be up front about my having some concerns about that proposal. And so there will be a need for discussion.

Does anybody who's going to be involved in that discussion want me to take the break now? It's almost eleven o'clock. I can take a five-minute break if people would like that before we go on to the next item?

I see no pleading for a break, so let's go on to the next item.

MS. STADLER: Thank you, Judge.

THE COURT: Hello, Ms. Stadler.

MS. STADLER: Hello again. As Your Honor just alluded to, as a result of some of the observations made in the first interim reporting cycle, the fee examiner saw fit to

consider changes to the Order appointing him to address inefficiencies in the process that he perceived as a result of that first round.

They primarily fall into three categories: There was the issue of work performed prior to formal retention. As you know, in Chapter 11, professionals have a retention order and their work starts as of the date of their retention, whether it's concurrent or retrospective. And there is a specific start date to when billing may begin.

PROMESA, as you know, did not incorporate the retention requirements, at least as for state professionals, of the Bankruptcy Code. And so we have a situation where some professionals started billing on the petition date or on the date of their formation in terms of the committee or appointment. But other professionals, and particularly those working for the COFINA agent, began their work before the Court formally appointed them.

And the fee examiner flagged that issue for the Court, and then made this motion to clarify that he would go ahead and review those pre-retention and pre-appointment fees and make recommendations on them. He has done that in his second interim report. That's not an issue that's expected to reoccur, so I would characterize that as sort of a housekeeping item.

THE COURT: And I don't have an issue with that, and

there have been no objections filed to that.

MS. STADLER: Right.

A little bit more broadly speaking, there is an issue of Title III versus non-Title III work. A really good example of this is not in our motion, because we just learned about it in talking to one of the professionals about the second interim fee applications. But one professional is very engaged in the recovery effort with respect to utilities and working with FEMA and seeking to get expenses reimbursed by FEMA, and there is a very fuzzy line between where this professional's Title III work ends and where the recovery effort begins, or the privatization plan effort begins. And that's true for a lot of these professionals. They're working on matters that are in Title III and outside.

Ms. Uhland, for example, just gave a presentation about the GDB, and one could argue that portions of the colloquy were Title III and portions of the colloquy were not Title III. And the fee examiner has concluded that rather than attempt to arbitrarily determine after the fact what is or what is not a Title III service, and to carefully avoid making any evaluation of non-Title III services, that he would instruct his counsel to review and report on applications for compensation that are filed in the Title III.

So, for example, Ms. Uhland's bill for today's hearing will reflect her attendance and the discussion about

Title III and Title VI, but the bill presumably will come to the fee examiner. And the fee examiner will review that bill without regard to whether those fees technically belong in one bucket or the other.

And so this Order also just clarifies that the fee examiner will have the authority and obligation to review and report on any fee applications filed in the Title III, regardless of whether the work performed was in the Title III. That's sort of just a practical revision, and I also have heard no real objection to that from any of the parties.

THE COURT: And that seems, to me, salutary as well and practical.

MS. STADLER: Thank you.

The final issue that is addressed by the motion is the issue of de minimis professionals. We learned through --

THE COURT: And McKinsey, which is not de minimis.

MS. STADLER: And McKinsey.

THE COURT: Not at all.

MS. STADLER: Right. Right. So McKinsey is not de minimis by any means. But as you know, the fee examiner and McKinsey sort of reached an impasse in the discussions about the fee -- first interim fee period because the standards that PROMESA borrows from the Bankruptcy Code with respect to reasonableness and necessity hinge on an evaluation of the time spent and services provided.

And the contract that McKinsey has with the Oversight Board simply does not lend itself to that type of analysis. So the fee examiner, after many discussions with the Board professionals, with McKinsey and others, concluded that it made the most sense to place the obligation for verifying reasonableness and necessity of that particular professional's services on the party most familiar with those services, which would be the Board.

The mechanics of how that review and recommendation and reporting process would work are obviously still open for discussion. There are no specifics about that in the Order --

THE COURT: I noticed --

MS. STADLER: -- other than to say that particular professional does not fit in the fee examiner process as it's complicated in the Orders creating it or in PROMESA, and we have to deal with that.

THE COURT: And so I will take that as an opening of the discussion on this topic. And I understand the dilemma that's presented, but the standards to which the fee examiner is seeking to work -- the PROMESA standards -- are the same standards that would apply to the Court.

And so it is not obvious to me that kicking this problem to me that has come to an impasse in consultations without some further structural changes in what's submitted will enhance at all my ability to make the determinations that

I would have to make ultimately under 316 and 317.

And so it certainly seems to me that some, you know, input from the Oversight Board as to the reasonableness and necessity of the services provided is essential, because they're there on the ground. But I can't simply delegate to the Oversight Board the responsibility and authority to approve McKinsey's flat fee arrangements.

And as you've noted, Section 328 is not incorporated into PROMESA. And so we have 316 and 317 which, even viewed conceptually as opposed to a specific exclusive list of factors, contemplates some metrics, some qualitative and quantitative benchmarks.

And so to cut to the chase, what I want to see is a process that still has the fee examiner involved, evaluating on the basis of the fee examiner's wisdom, experience, and contextual knowledge of all of the other professional, similar professional work that is being done.

Meaningful input to the fee examiner in the first instance by the Oversight Board and the development of metrics, which don't necessarily have to go to 10th of an hour timekeeping by McKinsey, but some metrics to be proffered in supplemental data submissions by McKinsey that could go to numbers of people involved in projects, in some sort of meaningful numbers, the amount of time spent on particular projects during particular periods, identifying deliverables.

There are various ways to get there so that the fee examiner would have some benchmarks for evaluation and be able to make some sort of recommendation to the Court on McKinsey's flat fee application or anyone else's flat fee application.

Because otherwise I would be sitting in the dark with the choice of deferring to the party that hired and signed that contract in the first place, which obviously has, you know, an appropriately built-in interest in saying that everything's come out fine, but that's not sufficient from my perspective.

MS. STADLER: Your Honor, I think that that makes a lot of sense. And obviously in our discussions with the professional, we didn't just throw up our hands and say, let's let the Judge deal with this. We had a long series of discussions.

As you know, the Board itself has its own fee examiner, Bob Keech, who is reviewing all of the Board professionals bills, whether or not Title III. And we spoke to him about this issue, and he had reached a similar conclusion, that there is just no way given the tools we have and the information provided that we can provide the kind of recommendation or assurance to the Court that these 316 and 317 requirements are met.

THE COURT: And so that's where I come in with my ability to sign under the words "so ordered".

MS. STADLER: Right.

THE COURT: I can change the game. And it seems to me I need to change the game.

MS. STADLER: I wouldn't disagree with that. If we're to do our job the way we have done it with respect to other professionals, I think that that's true. And that also applies then to the de minimis category, although much less significantly in terms of financial impact. The attempt with this proposal was to sort of co-opt the notion of ordinary course professionals that exist in Chapter 11 cases.

Most Chapter 11 cases of significant size have ordinary course orders that have specific procedures about thresholds beneath which formal retention and formal fee application are not required. And during the first round of reporting, we noted that there were a number of professionals, some of them, you know, with modest, in this case anyway, flat fees on a monthly basis, and others that simply were working on such small and discrete matters that the fee examiner concluded that his review and comment on them didn't make sense in cost benefit analysis.

And so we floated the idea and discussed it with the various interested parties and came up with a proposal in the Order, but obviously are open to the Court's or any other party's insight as to how to put a finer point on that.

The goal there is, again, not to kick the burden to

someone else, but merely to be cognizant of the fact that this process also has a cost, and that for certain types of professionals, flat fee being primarily among them, there's not a lot of value a detailed fee review process can add. So that's the thinking behind that particular proposal.

THE COURT: And I hear that. I think that the comments and structure that I suggest to be worked out in connection with the large flat fee provider could also be created in a proportionally appropriate way with respect to smaller flat fee providers.

And as to de minimis non-flat-fee providers, I honestly still don't want as a practical matter, given my very limited resources on which there are many, many demands, to have to devote my staff time to detailed review of billing statements. And to find the 10,000 dollar ones, and then look at time and charges on those to be able to formulate a recommendation for me, that's just not an efficient process in my chambers.

And so perhaps, if you can develop something that's almost, you know, algorithmic in its specificity for a -- I don't want to call it a safe harbor, but some sort of a template that small claims should fit that would make review easy and, you know, able to sort of slot into your process, that's something that I would prefer to a structure in which I have to figure that out. And also, you know, I just don't

have the ability to have that back and forth conversation with the providers either.

MS. STADLER: Yes. We can certainly do that and have done that in other engagements. So we'll work on that again in consultation with the professionals.

THE COURT: Thank you. I appreciate your candor and your willingness to work with me, as well as with the professionals, in finding ways to get me in a position to make the appropriate determinations. And so I think that does -- does that cover all of the categories?

MS. STADLER: I think so. Judge, do you want us to submit a Proposed Order addressing the two issues that we had agreed upon? That is, the pre-appointment fees and the non-Title III fees, and leave the other issues for a separate Order to be negotiated and discussed?

THE COURT: Yes.

MS. STADLER: Okay.

THE COURT: That would be very helpful.

And so to be clear, the application is granted as to work performed prior to formal retention, and as to review by the fee examiner of all applications submitted in the Title III, even to the extent that they cover certain non-Title III matters.

The motion is denied as to flat fee -- as to relieving the fee examiner of responsibility in connection

with flat fee and de minimis billing, with the expectation that there will be a proposal for a structure to cover those sorts of billings.

MS. STADLER: Understood. We will submit a revised Order.

THE COURT: Thank you very much, Ms. Stadler.

MS. STADLER: Thank you.

THE COURT: All right. And so the next item on the agenda is Roman III(3), PREPA's Motion for Entry of a Bridge Order and Extension of Removal Period.

Mr. Haynes.

MR. HAYNES: Hello again, Your Honor. Nathan Haynes from Greenberg Traurig for AAFAF, as fiscal agent for PREPA.

Your Honor, this is actually the Oversight Board's motion, but I'll be speaking in support of it briefly today. This is the third motion to enlarge the time frame for removal of civil actions. Your Honor, it's uncontested, but I did want to take a moment to point out that we are asking for relief that's a little bit different than the previous ones, and I just want to make sure that the Court had the opportunity to focus on that.

We're asking to extend through the confirmation of a plan of adjustment at this time. Given, just as a practical matter, given PREPA's limited resources and the multiple various work streams that PREPA's personnel are burdened with

on a daily basis, including current operations, the recovery, the liquidity issues, the transformation plan, the day-to-day issues in this bankruptcy or this restructuring case, we think it makes sense to just move it to the end of the case so we don't have to keep coming back to Your Honor.

Parties to these lawsuits have the ability to confer with us to seek relief from the automatic stay where they think appropriate, and we can make determinations at that time. And we have removed certain of the larger cases that we've identified already to this Court.

So all by way of saying, Your Honor, we think it makes sense to move it to the end of the case at this time. If Your Honor is not inclined to do that, we'd ask for 180 days.

THE COURT: At this point, I'm not inclined to move it all to the end of the case. And I think that the suggestion of 180 days, which translates into November, would be an appropriate time for an update and consideration perhaps at that point of a more open-ended extension to the end of the case.

What I would suggest, so that we can avoid the necessity of a Bridge Order, would be an extension through November 30th, with an Order providing for the ability to make a further -- an application for a further extension that's cued up in accordance with the CMO timetable for matters for

the November Omni. And so then that should avoid the need to have a Bridge Order from an expiry date to the Omni, since the Order that we'd enter now would cover through the end of November.

MR. HAYES: Very well, Your Honor.

THE COURT: So would you mind presenting a revised proposed order to that effect?

MR. HAYNES: Very well, Your Honor. Thank you.

THE COURT: Thank you very much.

And the next item is the motion of the Retiree Committee for formation of a committee for PREPA. That is item IV.1. on the agenda.

Good afternoon.

MR. GORDON: Good morning, Your Honor.

THE COURT: Or morning.

MR. GORDON: No problem. We're close to the afternoon.

THE COURT: It's been a long morning.

MR. GORDON: It has so far. Exciting, but still long.

For the record, Robert Gordon of Jenner & Block on behalf of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico.

Your Honor, we have before you today a motion seeking the appointment of a committee, or to at least address issues

of adequate representation of retirees in the Title III case of the Puerto Rico Electric Power Authority.

Your Honor, the Retiree Committee filed this motion for two basic reasons. First, it certainly appeared to our committee that the PREPA retirees needed to have or do need to have representation, and that we needed to -- that we needed to ensure that they have proper and adequate representation at this point in the case.

This was driven in part by the fact that there are approximately 18,500 participants in the PREPA retirement system, of which there are 10,000, roughly 10,000 retirees. The certified fiscal plan for PREPA certified in April indicates that the retirement system is woefully underfunded. It indicates an underfunding liability of 3.6 billion dollars, which is based -- that calculation is based upon, among other things, an assumption as to the return on investment of the assets at 8.25 percent, which is conceded in the certified plan as being robust or optimistic.

THE COURT: Yes.

MR. GORDON: So if that assumption was modified, the underfunding liability could be significantly higher. That toggle is very sensitive because you're essentially discounting the net present value liabilities over a 40 year time frame, so those liabilities could be significantly higher.

The certified plan also indicates, Your Honor, that it contemplates a ten percent cut in accrued pension benefits. That is explicitly stated. And the certified plan also contemplates privatization of various assets which certainly could create complex issues at the plan stage as to feasibility and the like.

So for all those reasons, we felt that an official committee for the retirees made sense because we did not know, and we still do not know, whether there is adequate representation of those retirees at this point, which is really the ultimate issue for this Court to determine, which leads to the second reason why we filed the motion.

There seemed to be some confusion, and maybe it still exists, as to whether the existing Official Retiree Committee is the representative of the PREPA retirees.

THE COURT: From the U.S. Trustee's submission, it seemed to me that the U.S. Trustee was saying that the U.S. Trustee had decided not to appoint a retiree committee for PREPA, which to me said from the U.S. Trustee's perspective, it's not part of the current committee at this juncture.

Do you have a different understanding of their positions?

MR. GORDON: No, Your Honor. Actually, our view is absolutely the same as that. There were indications, though, at one point from various parties, inquiries from certain --

THE COURT: Would you hold on one moment?

Did we lose the party? Oh, someone just disconnected on the phone. We can continue.

MR. GORDON: All right. Our view is consistent with what has now been articulated by the U.S. Trustee's office, but there were indications at other points in time and inquiries from some PREPA retirees at our website as to whether we were representing the PREPA retirees.

So we felt that clarity was very important, and we do agree that it is our view that at that point we did not represent PREPA retirees. There was no appointment entered in the PREPA case appointing our committee to represent those retirees.

And you can contrast that, by the way, with what the U.S. Trustee's office did for the Unsecured Creditors' Committee where they specifically stated that the Unsecured Creditors' Committee would be serving as the official committee for the unsecured creditors in the PREPA case, as well as the Commonwealth case.

So when you contrast that, it seemed very clear that we were not the representatives. So another reason why we wanted to file the motion was to provide clarity on this issue.

THE COURT: And based on the discussions that you have had with the U.S. Trustee, do you have any insight into

their reasoning in not appointing the Committee?

MR. GORDON: Your Honor, no, I'm not sure I do know the reasons why they have not. I think I will defer to them to explain that. I'm not exactly sure.

THE COURT: All right.

MR. GORDON: Okay. Thank you.

We did indicate, of course, in our pleadings that while the thrust of our motion was simply to alert the Court of our concern that someone or some committee should be perhaps representing the retirees at PREPA, we also did point out that should the Court determine that a committee should be appointed, that our committee stood ready, willing, and able to serve in that role, if that was deemed appropriate. And that we are in a sort of unique strategic position to provide those services. The Committee has hired seasoned restructuring professionals who are intimately familiar at this point with the facts and dynamics of these interdependent Title III cases.

But again, the thrust was to make sure that whether it was our committee or another committee or another entity, that there be proper and adequate representation of the retirees.

THE COURT: Do you agree with the United States Trustee that this Court's authority is limited to directing or declining to direct the U.S. Trustee to appoint a committee,

but that be -- selection of the membership of the committee, whether it's selecting your committee or some other configuration, is the sole province of the United States Trustee as opposed to the Court?

MR. GORDON: I would agree, with the addition of the words "in the first instance." I think that in the first instance, the Court can direct the U.S. Trustee's office to appoint a committee or to change the composition of the committee under 1102(a)(2) or (a)(4).

THE COURT: But since we don't have a committee, there would be no PREPA committee for me to direct them to change the composition of.

MR. GORDON: That's correct.

THE COURT: Sorry for that dangling preposition.

MR. GORDON: It's quite all right. But yes, it is also certainly conceivable that when you sort of meld 1102(a)(2) and (a)(4), it could be directed that the U.S. Trustee appoint a committee. And if it is our committee, to modify it as necessary to make sure that it adequately represents PREPA retirees.

So, for example, our committee does not have a PREPA retiree on it at this time. We did note in our original motion that there is a vacancy on our committee now. There was a resignation of one member in April, so we have an eight member committee at this point. So that's something to be

considered.

But I do agree that in the first instance, this Court can determine that a committee should be appointed and/or that a committee -- the composition of a committee should be amended in some way to provide adequate representation. And then in the first instance, it would be the U.S. Trustee's province to make that appointment or to change that composition.

Clearly there could be some review process perhaps by the Court to determine whether that's been done properly, but it is certainly the province of the U.S. Trustee's office to make those appointments.

THE COURT: Thank you.

MR. GORDON: So Your Honor, there were three responses and one joinder with respect to the motion. The Oversight Board and the -- joined by AAFAF, and the Official Unsecured Creditors' Committee filed responses to our motion in which -- and at the risk of putting words in the mouths of other lawyers, and they can certainly correct me if I'm wrong, but the gist of their responses was that they did not take a position on whether a committee should be appointed for the PREPA retirees. But if a committee were to be appointed, their preference and desire is that the existing Official Retiree Committee serve in that role.

The other response was an opposition filed by the

PREPA Retirement System, which is also known by its Spanish acronym, SREAEE. But I will refer to it as the Retirement System, if I may.

And in that reply, the Retirement System indicates that it is capable of representing the retirees of PREPA, and that it is the proper representative of those retirees. And in particular, there was a mention in the Reply that certain retiree associations had endorsed the Retirement System to represent the retirees in these Title III cases.

And in our Reply, we indicate, among other things, that we had not yet seen such an endorsement. The Retirement System then filed a Sur-reply, and I thank counsel for the Retirement System for their efforts to respond to the issues that we raised in our Reply. And they did attach a resolution that reflected an endorsement of the Retirement System to represent the membership of those retiree associations.

I want to respond, though, to the Sur-reply a little bit here. And I want to make clear that I'm not trying to create issues, but I think my duty of candor to the Court as it tries to consider whether it is appropriate and necessary to appoint a committee, I want to make sure that I've alerted the Court to any number of considerations that may be relevant.

THE COURT: And so just before you go on there, I want to underscore that the decision that I need to make

today, the decision that I will make today, is as to whether or not to direct the United States Trustee's office to appoint a committee.

I do not intend to -- well, I cannot direct the United States Trustee's office to appoint a particular representative. That is for the United States Trustee's office. And so as not to be complicated, I'll adopt here "in the first instance." We don't have to talk about what might conceivably happen down the road.

And so to the extent there is anything that you feel you can articulate briefly that you think is essential for the U.S. Trustee's office to hear, since their representative is here in this courtroom, that's fine. But you're principally speaking to the U.S. Trustee's office when you're talking about membership.

MR. GORDON: Absolutely, Your Honor. Thank you.

So the endorsement was -- it should be noted was executed on May 28, just a few days ago. It does not indicate whether the individuals who are the members -- individual retirees who are members of these associations had any vote in the endorsement, or whether they or the retiree associations were completely aware of their options, that they could have had both the Retirement System representing their interest and a Retirement Committee representing their interests.

I just throw that out as a suggestion of things that

may or may not have been aware to the people who signed the endorsement. The endorsement indicates that those retiree associations cover, I believe, 7,500 beneficiaries. There are 10,000 retirees, so it's not -- it's a robust number of retirees that the associations represent, but it is not a hundred percent of the retirees.

And so those are things that I think someone needs to consider, you know, whether those endorsements are sufficient to identify the Retirement System as the proper representative. And if they think that that is proper, then, you know, certainly we respect that. We will abide by that.

There are other issues though, as well. The Sur-reply attaches a set of regulations that were somewhat ironically, I think, attached to indicate the independence of the Retirement System and its ability to serve in this role as the representative for retirees. But if you -- and again, I'm not trying to create issues, but I think it's important to at least alert those who will be making the decision of these things.

Paragraph 3 of Article 9 of the regulations indicates that PREPA itself has the authority under certain circumstances to terminate the function of the Retirement System completely at any time. And I believe that this issue, this independence issue, is something that is already being raised by PREPA and AAFAF in other pending litigation with

respect to certain members of the board of the Retirement System.

So I don't think I'm alluding to something that isn't already being addressed in some fashion, but that certainly, I think, could raise concerns if the Retirement System could be terminated at any point in time. If it is -- that if there are issues down the road where there is a dispute or disagreement between the Retirement System and PREPA, and PREPA's management, that PREPA could stand before this Court perhaps and make the argument that the Retirement System is nothing more than a part of PREPA and doesn't really have standing to oppose what they are doing.

Or they might actually go ahead and terminate the function under this Article 9, Paragraph 3, and suddenly you're at a mature place in the case without, perhaps arguably, proper representation of the retirees. I think that's at least something that, to me, is of some concern.

I also don't know, it hasn't been made clear, what additional professionals have been hired by the Retirement System to help them in the situation. I know they have counsel here today who's very capable, but I don't -- I'm not aware that they have restructuring advisors. I know that they have the Cavanaugh firm as their auditors who are well respected, but I do raise that issue as well.

And then finally, I just raised the question of, I

just don't know why there would be a concern from the retirees' standpoint having additional representation and additional resources there for their interest. There's nothing that would preclude the Retirement System and a retiree committee from weighing in on issues, working collaboratively and so forth.

And again, as I mentioned, I think our committee has some resources that could be very helpful. I think the response has been in the pleadings that there's a concern about confusion for retirees if there's more than one party sort of representing their interests.

I can tell you at least from Detroit, my experience in the Detroit case representing the retirement systems there, that I don't think there was confusion. And if there were different perspectives, and I don't even know if there would be different perspectives between the two entities, between the Retirement System and an Official Retiree Committee, I don't think that that necessarily leads to the conclusion that there is confusion.

I don't think that different perspectives necessarily equal confusion. I think that different perspectives could be helpful in looking at the issues from different angles. And then at the end of the day, if there is a plan of adjustment proposed at PREPA, you know, that plan is going to get voted on by the retirees themselves. It's not voted on by the

Retirement System. It's not voted on by the committee. So it's not as if one or the other entity could ultimately decide for those retirees how things should work.

So there is that safety net that at the end of the day, it's the retirees who vote on matters, and then they can subscribe to the views of the Retirement System, if they believe that the Retirement System is articulating the better viewpoint. It's still possible.

Which just brings me back around again, Your Honor, to just saying, again, I just want to reiterate that we believe this is a matter as far as whether a committee should be appointed or not, or whether the Retirement System provides adequate representation is something for the Court to decide. We raise it out of our general sense of responsibility to retirees generally and our duty of candor to the Court. So thank you.

THE COURT: Thank you, Mr. Gordon.

Did any other proponents of the Retiree Committees' motion wish to be heard very briefly?

MR. ROSEN: Thank you, Your Honor.

THE COURT: Mr. Rosen.

MR. ROSEN: Thank you very much, Your Honor.

Your Honor, as we included in our pleading, the Oversight Board supports the motion to the limited extent that the Court enters an Order expanding the scope of the Retiree

Committee or seeks to expand the membership of the Retiree Committee to include additional PREPA retirees.

We do oppose the motion, however, to the extent of it seeks the formation of another committee. As stated previously by the fee examiner and by the Court -- we're very conscious of the costs associated with this, and we think that the duplication of the effort of having a separate PREPA retiree committee would be exponentially foisted upon the Title III estate, and we would hope that the Court would limit any relief to the expansion or the designation of the existing Retiree Committee.

THE COURT: Do you believe I have statutory power to do that or was that speech really for the U.S. Trustee?

MR. ROSEN: No. I believe you have the authority to expand the scope as they requested it, yes, Your Honor, by adding PREPA retirees to that committee.

THE COURT: But that committee has only been appointed in the Commonwealth case. That committee hasn't been appointed in the PREPA case.

MR. ROSEN: Yes, Your Honor. I don't know where Mr. Gordon went, but -- I don't want to disagree with Mr. Gordon, but through conversations that we had with the U.S. Trustee, I think that the U.S. Trustee may have said that the existing committee may have the right to represent those PREPA retirees. So perhaps the U.S. Trustee could give the

Court a formal statement about that at this time.

THE COURT: Well, I was planning to call on Systema's counsel, and then on the Office of the U.S. Trustee.

I'm sorry. Mr. Despins.

MR. DESPINS: Two seconds.

THE COURT: Yes.

MR. DESPINS: Luc Despins with Paul Hastings for the Official Committee in the PREPA case.

Frankly, we didn't see how this movie would unfold in the sense that we did not know there was a group that took the position that they represented these retirees. And, therefore, we had said we had no problems with the existing committee being expanded to represent, basically the same thing Mr. Rosen has stated.

But if there is a group there that says we are representing those retirees, that -- the committee cannot support a motion that could lead to the appointment of a separate committee for PREPA, unless that's the other committee.

So I'm not addressing Your Honor's question as to whether you have the ability to do that, but I'm assuming that you will find that you have no ability to do that. And if that's the case, the committee, in light of what has transpired, would not support the appointment of the separate committee for PREPA.

THE COURT: Thank you. Anyone else on the proponent or semiproponent side?

Okay. Counsel. Thank you.

MR. EMMANUELLI JIMENEZ: Good morning. Thank you, Your Honor.

THE COURT: Good morning.

MR. EMMANUELLI JIMENEZ: My name is Rolando Emmanuelli Jimenez. I represent PREPA's Retirement System or PRS. PREPA's Retirement System has unique characteristics that do not make it comparable with the Commonwealth retirement systems that are under the umbrella of the Official Retiree Committee. That is, central government, teachers and judges.

PRS is an independent entity, with a Board of Trustees with particular rules and regulations, separate assets and funding source. This board is regulated by voting rules that guarantee a balance between the interest of the different stakeholders.

The PRS is not under this Title III proceeding. Therefore, the Board of Trustees maintains all its power to control what is going to be with the system.

By the way, Article 9 mentioned by brother counsel Gordon states that the Board of Trustees should consent to the dissolution of the Retirement System, so it's not unilaterally decided by PREPA.

There is also a trust agreement with the bondholders

with particularities that no other retiree system enjoys, especially the provision that any payment to bondholders is subordinated to the payment of PREPA's operational expenses, including retirement obligations. So there is no underrepresented interest of the retirees in PREPA's Title III case.

The U.S. Trustee declined to appoint an official committee of PREPA retirees under the discretionary authority given to him by the Section 1102(a)(1) of the code. Any motion seeking relief under either section 1102(a)(2), an additional committee, or section 1102(a)(4), modification of the retiree committee, must comply with the burden of section 1102 to establish that the relief is necessary to ensure adequate representation.

The committee's motion does not meet the burden of Section 1102 of the Code of establishing lack of adequate representation. On the contrary, PREPA's retirees are represented by the Board of Trustees of the PRS. The majority of the retirees have expressed that wish to be represented by the Board of Trustees. You can see the resolution that is attached to docket 3228 in the Commonwealth case.

Out of 10,000 PRS participants of whom are current retirees, 7,522 express through the respective organizations their wish to be represented by the Board of Trustees. With that crushing number, Your Honor, how come the committee would

hold their position that here is an issue of misrepresentation? There is no evidence that PREPA retirees are alleging that they are not adequately represented. This is just a blanket statement in the committee's motion without presenting facts to support it.

The intervention of the committee would be disruptive, duplicative and unnecessary. Based on the differences between other retirement systems, there will potentially be disputes between the committee and the PRS regarding the course of action and communication and advice to PREPA's retirees.

Having PREPA's retirees entrusted the Board of Trustees of the system for the representation in this Title III case, this will cause suspicion and mistrust regarding the committee's actions and recommendations. This could lead to chaos and recklessness.

There will be two teams of attorneys, financial advisors, actuaries, et cetera on behalf of PREPA's retirees. This will cause unnecessary inefficiencies and delays. This also will increase the cost of this Title III case, leaving less funding for retirees.

For those reasons, Your Honor, we understand that there is no justification to either extend the jurisdiction of the retiree committee, nor to appoint a new committee for the PREPA's Title III case. Thank you.

THE COURT: Thank you.

And for the office of the United States Trustee --

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: Good morning, Your Honor.

THE COURT: Good morning.

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: Monsita Lecaroz, Assistant U.S. Trustee. With me is Michael Bujold from our executive office in D.C.

THE COURT: Good morning.

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: Your Honor, we tried to submit our position in writing for the Court's benefit and for the parties' benefit. It doesn't seem to have done much in that regard.

We take no position on the merits of the Retiree Committees' motion or the opposition to it, Your Honor. If the Court orders relief under (d)(2) -- under (a)(2) or (a)(4), we will undertake our statutory duty and make the appointments as ordered by the Court.

I don't want to rehash our motion, so if Your Honor has any questions for me?

THE COURT: Well, to the extent you're willing or able to share your reasoning, I'd be grateful there. I think it is objectively obvious that there are serious issues for retirees in connection with the Title III proceedings of PREPA.

There are the provisions of the fiscal plan that had been noted by Mr. Gordon. There is pending litigation about whether the plan is part of PREPA or not. There may well be issues like the individual benefit claim levels that go to actuarial assumptions and things on which the Board of the Retirement System and retirees might differ. And until the opposition was filed to this motion, there wasn't an appearance in the Title III case for PREPA of a retiree representative entity.

And so if you came to comfort with the notion that there was no necessity, it would just help me to understand that a bit more, if you're in a position to share?

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: I'll tell you what I can. At the time of the formation of the -- and the appointment of the Retiree Committee, we understood that it covered all the retirees in Puerto Rico. The Title III filing of PREPA was later.

As to why we decided not to appoint a committee under (d)(1) -- under (a)(1) in the PREPA case, I can't go into that. It's a deliberative process --

THE COURT: Yes.

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: -- that -- but as you know, we've given a lot of thought to all this in every Title III case and through the first original committees, so that was our decision at the time.

As to everything that you mentioned regarding the actual controversy, we really don't take that position. I understand, Your Honor, that's part of the criteria that you would need to analyze under the adequate representation analysis that requires -- that it's required under the Retiree Committee's request to Your Honor for a modification under (a)(4) or an appointment of a committee under (a)(2).

And once Your Honor decides, based on that analysis, then we would be able to decide whether to appoint or to modify the committee.

THE COURT: Yes. Thank you.

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: I'm sorry, Your Honor. You're welcome.

THE COURT: Thank you for that input.

Mr. Gordon, did you have any remarks by the way of reply?

MR. GORDON: Your Honor, actually, to answer your question, I don't think I have anything further to add. Mr. Emmanuelli mentioned that he didn't think that we have made a showing sufficient, and I just want to emphasize that we don't necessarily -- we didn't view this as an evidentiary hearing, and we also didn't view it as our role to argue strenuously one way or the other on this matter.

We don't have a PREPA retiree on our committee. We are just trying to raise issues for the Court or whomever to

consider in that regard, and that's as much as I can tell you. I can't think of anything else.

No, I have nothing further, Your Honor.

THE COURT: Thank you.

MR. GORDON: Thank you.

THE COURT: Well, it seems clear to me that there are, as I mentioned in my chat with Ms. Lecaroz, that there are serious retiree-related issues within the PREPA Title III. It is not clear to me on this record, though, that there is a problem of inadequate representation of the PREPA retirees requiring the appointment of a formal retiree committee now. And that may just be as a practical matter, because there -- there hasn't been an inflection, a specific inflection point for those issues to be engaged at this point with the very recent certification of the fiscal plan and the development of the privatization proposals. And, you know, we are in a fairly fluid situation.

And so I think it best for me and for frankly the office of the United States Trustee, to have the opportunity to observe and reflect for a little bit longer, and see how things ripen and see what sorts of issues are or are not raised and by which organizations or constituencies, whether there are concerns raised by individual retirees of an order of magnitude that would queue up the issue again.

And so I am denying without prejudice the Retiree

Committee's application that I construe as one for a court direction to the office of the United States Trustee to appoint a retiree committee for PREPA. So that is denied without prejudice, and we will see how things develop.

MR. GORDON: Your Honor, I apologize, but just then, for the record, just to make clear if we could, for the comfort of the existing committee members and the existing committee, we are not the official committee in PREPA's Title III case. That's our understanding, and that has been expressed as well now by the U.S. Trustee's office. I just wanted to make sure that we were clear about that.

THE COURT: That is my understanding as well. And I'm looking again to the United States Trustee's office end of the table. The existing Retiree Committee has not been appointed in the PREPA Title III case.

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: (Nodding head up and down.)

THE COURT: And does not have responsibilities in the PREPA Title III case.

MR. GORDON: Very good.

And you say, you're saying, you're denying the motion without prejudice, and I understand that. I will just express that it is somewhat again, I don't know if I would say the word uncomfortable, but difficult for us to be -- I hope that somehow the process -- someone will be vigilant about the

process because you can understand that there is no one who has an incentive in the Title III case to say hey, those people are not well represented.

And if those people, if there's a group of creditors who aren't being adequately represented, part of the reason for forming a committee is they don't have a voice necessarily. They don't know how to reach out to the U.S. Trustee's office or to somebody to say we need representation. They may not know we need representation.

So I just -- you know, I guess this is my way of saying that I hope that somehow there's a vigilance going forward. Because if things become complex and we get to a mature point in the case, it becomes hard at that point to say oh, now we need someone to get involved. But I respect and understand the position from the Court today.

THE COURT: Well, I will say that I'm expecting in the first instance, that the U.S. Trustee's office, which has the statutory power to appoint committees, will be on the front line of that vigilance in connection with its monitoring of the case.

And I would also like to suggest in that connection that to the extent there are questions raised by your retirees to your committee, PREPA retirees to your committee, you might direct them in the first instance to make their inquiries of the U.S. Trustee's office as to whom they should direct their

questions to.

And if the United States Trustee's office has any issue with these two observations, I invite Ms. Lecaroz to come back to the podium. But that would be my suggestion for now, and I would be expecting that if the U.S. Trustee's office perceives that things are inadequate or not properly attended to, that the United States Trustee's office would initiate a process.

MR. GORDON: Thank you, Your Honor.

ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: Monsita Lecaroz. Yes, I want to assure the Court that we are constantly monitoring the case and we are constantly monitoring the committee composition, and we will continue to do so. And we are always able to, and willing to, receive any communications from anybody regarding to the case. Thank you.

THE COURT: Thank you very much.

And so it is now five to 12:00, and we promised a break from 12:00 to 1:00 for lunch. And so we will begin the lunch break now.

We will resume at one o'clock with the renewed 2004 motion before Judge Dein. See you in an hour. Thank you.

(At 11:55 AM, recess taken.)

(At 12:57 PM, proceedings reconvened.)

HONORABLE MAGISTRATE JUDGE DEIN: You may be seated.

Good afternoon. I've given you all of lunch to

resolve this. How did you do?

MR. DESPINS: I'm glad you haven't lost your sense of humor. That's good to hear.

HONORABLE MAGISTRATE JUDGE DEIN: Talk to me later, in an hour. We'll see how I'm feeling.

MR. DESPINS: So, Your Honor, I think we divided the time -- I should say good afternoon, Judge Dein. Luc Despins, Paul Hastings on behalf of the Committee. We're here on our renewed motion for 2004 examination.

I think we had reserved 30 minutes for our time. I'd like to take 10 on opening, 10 for reply. And let me jump right in.

First, as a housekeeping matter, we are incorporating here all our prior pleadings and the arguments. We're not going to repeat them. No worries. But I wanted to make sure that that was there for the record.

And I'll say at the outset, because I know you will get there in about two minutes, I will get to the following questions, which is why now, why not wait, talk to me about duplication. So we'll cover all those points.

But first, I want to talk about just a little bit of background, not a lot, but I think it's important to recall the context.

And as I said before, I would not be making the statement if it was not a quote from a newspaper article, but,

you know, the current governor has called the past Puerto Rico, quote, a big Ponzi scheme. And there's a sitting First Circuit judge that has suggested that a grand jury investigation -- a grand jury should be empanelled to look at what happened in the past. So this is a very serious matter.

When you contrast that, Your Honor, with the tenure -- first let's look at the report that we've gotten so far from the investigator, which is fine. It is attached to the pleadings, and it was filed in April.

And you can -- I'm not going to go through it, but I think it shows that they're approaching things in a very different way than needs to be approached, from the point of view of recovery against bad actors. Not from the point of view of writing a report on measures that should be taken to avoid similar things. We're not interested in that. We're interested in dealing with claims against bad actors or subordinated claims or challenging claims of people of that ilk.

And, you know, the investigator has said many times that he's not interested in a finger pointing exercise. And that's confirmed by the statement we put in our Reply. Governor Vila, who was a former governor during the COFINA period, said, one, that I can confirm that what the committee says in the renewed motion is correct.

And what he means by that is that he met with the

investigator or somebody from his office, and the first thing they told him is that they're not interested in pursuing claims or guilty parties. And that we're not, quote, we're not doing any kind of investigation to say who is to blame or anything.

And we probably will hear from Mr. Mungovan that they are going to identify claims. But everything we see from the investigator and confirmed by witnesses that have been interviewed is that, in fact, he is telling them that that's not the case.

HONORABLE MAGISTRATE JUDGE DEIN: So I'm not going to stop you, but I do want you to focus for me in this intro on what you're actually getting.

MR. DESPINS: Yes.

HONORABLE MAGISTRATE JUDGE DEIN: My point throughout this whole thing was not that you would be using the materials the same way as the independent investigator, but the question was really is there a world of documents that are being obtained that everyone can use differently --

MR. DESPINS: Yes.

HONORABLE MAGISTRATE JUDGE DEIN: -- but not having to be searched for twice.

MR. DESPINS: Okay. So --

HONORABLE MAGISTRATE JUDGE DEIN: And there seems to be very different representations in the pleadings as to

what's actually been produced for the committee to have access to.

MR. DESPINS: So let's start with that. Until we filed our motion, the only thing that was produced to us by the investigator, and the source being Santander or Banco Popular, were what I would call phonebooks, not -- of course, not phonebooks, but public documents, deal documents, et cetera.

The first custodial production occurred after we filed our motion. It was from Santander. So when they say they filed thousands of pages, yes, there are a lot of pages in a prospectus or in a deal closing binder, but the custodial production occurred after we filed our motion.

So you might say, so therefore you're getting it, so you're happy. No, Your Honor. The problem we have is that we have those documents, but we had asked the investigator for what search terms were used, because as you know, I know you do this every day, without search terms and custodians, it could be meaningless. Meaning, you could say to -- I'm exaggerating. You could say to a legal assistant at GDB, please produce all documents regarding the financial crisis and they'll be two pages. But if that's directed to the right person, it could produce thousands of pages. So they have not shared that, so we don't know.

Even worse than that, GDB has not produced a single

document. Let me be more precise. GDB may have produced documents, we don't know the details, to the investigator, but not one was produced to us. Reason being, because we can't apparently agree on an NDA, but we've been after them for months, Your Honor, on this. Literally for months. And every time, oh, yes. We'll get back to you. We'll get back to you.

And I think we should be rewarded for not having come to court earlier, because we tried to figure it out and it was never resolved. I think we'll hear from counsel for AAFAF as to whether that issue is resolved today. I don't believe that what he proposed is going to resolve the issue, but clearly today we have zero documents.

And as you know, we know this from the GAO report, which is a public report filed by a governmental organization that talked about the financial crisis in Puerto Rico and the debt issues and all that, and places GDB at the center of this, you know, what the governor called a Ponzi scheme, as an enabler of this whole system. And that's in the GAO report.

So we know that GDB is critical to this, and we've seen zero documents. And you've heard this morning as to what's -- why GDB is relevant today. So that's the first thing.

So we're not getting -- we certainly don't know. We've given them the topics. We did what Your Honor said. We gave them the request for production. And as far as we know,

they did ask them to produce those documents. So we're not debating that.

The question is, we have no visibility into search terms, custodians. And, in fact, when we asked them for custodians the first time this came up, you know, they had left out the members of the Board that are -- that were previously at Santander or Banco Popular and GDB, I forget which one of these three entities, but certainly two of those three.

And they never told us that they would until we filed our motion. And then they said, oh, yes, we've asked them for documents. We don't know who they asked, those members of the Board or their former employers. We don't know.

In any event, Your Honor, you're right that in an ideal world, if we have all the documents, there is no problem. But right now they're only sharing with us Santander, Banco Popular, and any other documents where the producing party has agreed that we can see it.

Well, what do you think the producing parties are doing? They're not -- they're not agreeing that we can see them.

HONORABLE MAGISTRATE JUDGE DEIN: Is that true? Do you know that?

MR. DESPINS: Yes, because we know that --

HONORABLE MAGISTRATE JUDGE DEIN: We know GDB.

MR. DESPINS: We know GDB, we haven't gotten one document. But we know from their response that they've said they've received documents from dozens of people. So I know, I can count that Santander, Banco Popular, that's only two, so they have other people.

And we don't have those documents except for Standard & Poor's, again, you know, phonebooks, their rating reports and all that, that are public documents anyway. But we have no documents from investment banks that were -- other investment banks that were underwriters. And there's a bunch of those.

So either they have not received documents from them or they're not sharing them with us because they have the power not to share with us if the producing party says no. So that doesn't work.

And then the question becomes, Your Honor, why not wait to see the report. So that's very important to understand what relief we're seeking. Today, nothing would happen. Meaning, if you grant our relief, nobody would have to lift a finger today. Santander and Banco Popular would have to -- would have to start conferring with us on August 15th as to any additional production.

You might say, well, if you get all the documents, why do you need additional production? Of course, we're not going to have them produce the same documents twice. So it's

going to be either very limited, because they will produce all the responsive documents, or it won't, because the investigator didn't get all the documents they should get. That's the only relief you're granting today, meaning that it would start on August 15.

And you might say well, why not wait for the report? And my point on that is as follows: There are two worlds we live in. Either -- actually, three. The first one is the report -- they say don't worry, the report's coming August 15, so there's no problem.

And they told you before when we were not here but we were in New York, or maybe we were in Boston. I forget. But anyway, it was in New York. They told you that the report would be ready late March, early April. Was that a binding agreement? No. But that's certainly the guidance they gave to everyone. And they blew through that guideline without any explanation, which is fine.

But the point is that now they're saying August 15, but we don't know whether that's going to happen, because they say that's subject to people producing. And of course, you have to know there's a symbiotic relationship between the investigator and the targets, because the longer it takes for them to produce, the more time he needs. And then we're on the sidelines.

So the point is either they will file that report --

let's start with number one. They will not file that report by August 15. Well, then we'll be very glad that Your Honor entered an Order today saying August 15 is when the clock starts. Or they will file a report, and then there are two alternatives.

It will be, as they will tell you, that it will contain all claims, they will identify all claims against other parties, et cetera, which is contrary to what they've said in their witness interviews. And if that's the case, then I'm not going to -- again, we have no interest in duplicating stuff.

There's a fee examiner. We've heard the discussion this morning about how closely he's following professionals. I'm sure they would be all over us if we did that. No incentive to duplicate. They will take their report and use it to the maximum extent possible.

And if the report is of the type we think it will be, which is a Reader's Digest version of, you know what? They incurred too much debt. Well, I think we know that. Or there's a lack of transparency. We know that. Congress has already said that in the PROMESA Statute.

So if that's the report, then we'll be very glad that we started on August 15. Why August 15? Why not wait until September? Well, the reason being is that there is a deadline that's going to expire.

You might say, well, that's years away, but May 9, 2019, is just around the corner, because you have to file a complaint by then. And when you file a complaint, you have to do discovery.

And the way these guys -- these guys -- what I mean is targets generally produce documents. It's not going to be produced on September 15. There's going to be a lot of back and forth. You know this from the other 2004 aspects of this case where we're going at it now for months. And therefore, we cannot miss that deadline of May 2019.

But more importantly, there's the GDB proceeding that's going full bore right now. And the other part that's going full bore are the plan negotiations.

You have people showing at the table and saying I have four billion dollars of those bonds. They're not going to say well, by the way, they're subject to a challenge debt. They exceeded the debt limits under the Constitution and all that. They're not saying that. They are assuming their claims are allowed.

There's nobody challenging that. There's nobody investigating that, as far as we know. That has to happen now because how can we have a settlement or a discussion with a group of creditors that are allegedly owed billions of dollars when their claims are subject to challenge?

But that's why, Your Honor, we think there's a need

to act now. And also, that's why we made it very limited, meaning the rope you're giving me really is from August 15. The two banks have to meet and confer with us. Very modest exercise given that we filed our initial motion a year ago.

And then there's a check-in point in September where you might say, well, committee, stand down. We have a beautiful report that explains all the claims and all that and, therefore, there's no need to do any investigation. That's an alternative. Or no, go ahead, committee. Keep doing what you're doing.

But to start that argument in September, it's going to be a waste of time. And also, the investigator needs to know that the Court is sending you a signal, which is we've given you a year basically. August 15 is -- they were appointed September 1st. Fine. It's not a year, but almost a year.

They're not giving you more time, meaning you can keep going with your investigation. If you want to take two years for your report, that's fine, but the Court is not going to put the process on hold for you to do your report. And that is why it's so important to rule on this today, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: So let me just ask you a few questions on very concrete facts.

As I understand it now, you are saying, though, that

you did propose document requests and that as you understand it now, those were conveyed; is that correct?

MR. DESPINS: That's correct, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: And that the issue of the custodians is no longer -- you identified certain custodians, I think it was Mr. Garcia, Mr. Gonzalez, and as far as we understand now, they were -- those records were searched?

MR. DESPINS: No, we never heard back on that.

HONORABLE MAGISTRATE JUDGE DEIN: You don't know?

MR. DESPINS: We know from their response that they've asked for documents from these gentlemen, but we don't know how. From the previous employer, from their current files, we don't know.

HONORABLE MAGISTRATE JUDGE DEIN: So the documents you have from Santander and Banco Popular, you're satisfied that you can review those in this time period between now and August?

MR. DESPINS: Yes, we --

HONORABLE MAGISTRATE JUDGE DEIN: But you want to know what the search terms were and you want to know who else produced documents?

MR. DESPINS: Correct. And we want those documents to be produced to us, regardless of whether these people consent or not.

HONORABLE MAGISTRATE JUDGE DEIN: You want those now, not before August?

MR. DESPINS: Correct.

HONORABLE MAGISTRATE JUDGE DEIN: All right.

MR. DESPINS: But I would say, Your Honor, the search term -- you know this. I don't know why I'm telling you this.

HONORABLE MAGISTRATE JUDGE DEIN: Unfortunately, I know a lot about search terms, but that's okay.

MR. DESPINS: I know. I'm sorry. But they're critical. And also meaning what follow up was made and all that. I mean, there are so many ways of dodging production, as we know. So it's very important to know that.

But again, the limited relief we're asking from August 15 is the obligation to meet and confer. If we have everything, there'll be nothing to meet and confer about.

So we're -- my point is we're assuming we're in a world where either the report won't be filed August 15, or the report will be a Reader's Digest report, or there will be some claims identified, not others, but that's why we're saying let's start this process now.

HONORABLE MAGISTRATE JUDGE DEIN: What I don't want to do, though, is end up in September with a discussion about what has been produced and what has not been produced. And so I will hear from everybody on that. But that's really a

critical concern to me at the moment, because there seems to be shifting representations as to what's been available and what has not been available.

Okay. And just for GDB, the August time schedule doesn't fit the Title VI schedule.

MR. DESPINS: No. First of all, these documents should have been produced months ago.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. DESPINS: So they need to be produced now. But we will sit down with counsel for AAFAF, with Suzzanne Uhland and try to have a schedule that works both for the discovery and the Title VI.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. So you expect that to be addressed in the whole Title VI briefing, the new schedule?

MR. DESPINS: But I want to be precise. There are two things going on with GDB. GDB, there are issues about whether the GDB folks should get a release under their -- because the Code, the Code PROMESA doesn't provide for that.

But putting that aside, whether there are facts and circumstances that would say that these people should not get a release, that's a very narrow issue. But GDB was the bank that structured all these transactions, so they're at the center of all these.

So for example, the issue of whether the 2014 GO

bonds should be challenged and what knowledge people had as to whether it violated the debt limit under the Constitution, that's all within GDB.

That may or may not relate to the Title VI release provisions, but it's broader. So there are two things going on at the same time there.

HONORABLE MAGISTRATE JUDGE DEIN: Do you expect it to participate in the schedule of the Title VI process, to include discovery, or you don't?

MR. DESPINS: No. I think that we should deal with GDB here because it's a broader request. I'll give you examples of documents we've asked of Ms. Uhland, for example. We've asked her to give us copies of bank accounts and things like that, or to see what the relationship was between the depositors and GDB. Very cut and dry, boring legal documents. But we're not asking her to produce any e-mails or anything like that. That should be done in the context of this effort here.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

MR. DESPINS: Thank you, Your Honor.

MR. MUNGOVAN: Good afternoon, Your Honor. Timothy Mungovan from Proskauer Rose for the Oversight Board as the representative of the Commonwealth and the Title III debtors.

Your Honor, let me just tell you up front what our recommendation is, and then I can address Mr. Despins'

arguments and commentary.

For the Oversight Board, we believe that the motion should be denied without prejudice subject to their ability to come back and renew their motion once again in August or September after the report has been finalized and completed, all of the documents have been assembled. And we can have a process, and we're happy to work out with Mr. Despins a process where he can identify to the Court what else he needs, when he needs to get it by, and a path to do that.

Let me address specifically two items. So the UCC's motion gets a number of things wrong. I'm just going to focus on two, and I'm going to get right to the document issue.

But first, the UCC asserts repeatedly throughout its motion papers, both its Motion and its Reply, that the independent investigator is not going to identify potential claims.

I communicated again yesterday with the independent investigator. I have no idea where the UCC comes to the conclusion that claims will not be identified. In the April 5th report, the independent investigator states specifically that it will identify claims. I can give you the page and paragraph number.

HONORABLE MAGISTRATE JUDGE DEIN: I have to admit that I couldn't tell whether it was all kinds of claims or regulatory claims or it was missing a comma.

MR. MUNGOVAN: It's a fair point, Your Honor.

So I communicated directly with counsel for the independent investigator yesterday, and I can tell you that the independent investigator will provide a comprehensive discussion of claims and avenues for value recovery in its final report.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. MUNGOVAN: So I think that --

HONORABLE MAGISTRATE JUDGE DEIN: I understand that -- I think the report wasn't as clear, but thank you.

MR. MUNGOVAN: I wanted to be as crystal clear as I could be. That's precisely what I was told last night. I expect that the report will comply with the representation that I just made to you on behalf of the independent investigator.

Let me go to the second point, which is the documents, and what's been provided and what hasn't. Let me try to simplify this. As I was listening to Mr. Despins present to the Court, I grouped the documents into three categories, okay?

The first category are the documents from the Popular and Santander entities. That's category one. Category two are the documents at GDB, or the GDB related documents. And you can group categories one and two together to some degree, because they are the Puerto Rico financial institutions that

are the subject of the UCC's motion. I've segregated them for a reason, which I'll explain in a minute. And then there's a third category, which are what we'll describe as the other parties that have been the subject of the independent investigator's investigation.

With respect to category one, which are the Popular entities and the Santander entities, the UCC has all of the documents that the independent investigator has obtained from those parties. Period.

HONORABLE MAGISTRATE JUDGE DEIN: All right. But with -- so for those entities, his concern is the search terms and the custodians?

MR. MUNGOVAN: So with respect to that issue, Your Honor, that issue has not been raised before today. I do not recall seeing it in the briefing. I know that there are regular calls between the investigator and both committees, the Retiree Committee and the UCC. And to my understanding, that issue has not been an issue that the UCC has articulated and said, we have a problem with this.

I'm more than happy to work with the independent investigator and Mr. Despins to discuss search terms, custodians and the like, and to see whether there's a basis to bridge this apparent disagreement. But when I tell you that this is the first time I've heard of it, I've heard of it 15 minutes ago.

HONORABLE MAGISTRATE JUDGE DEIN: No -- well, I think it is in the briefing, but there's a lot of briefing.

MR. MUNGOVAN: If it is, I apologize, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: But is it something that --

MR. MUNGOVAN: I think it's something that can be worked out.

HONORABLE MAGISTRATE JUDGE DEIN: -- you think can be worked out?

MR. MUNGOVAN: I have no doubt that it can be worked out, Your Honor. As you know, we've appeared in front of you on other cases, and search terms were an issue. I understand it intuitively. I'm more than happy to help bridge the gap.

HONORABLE MAGISTRATE JUDGE DEIN: So it's not something you're claiming top secret on?

MR. MUNGOVAN: I can't -- until I speak with the independent investigator about it, I can't tell you that they may not take that position. I just don't know. But I'm happy to try to work it out. And if it is an issue, I'm happy to report back to the Court, and I'm sure Mr. Despins will.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. MUNGOVAN: That's Popular and Santander. That's category one. I think that we can resolve that.

With respect to the GDB, let me just tell you the current state of play as I understand it. Right now, the

independent investigator is working with AAFAF and GDB to obtain documents, but right now the independent investigator's itself receiving those documents on an attorneys' eyes only basis, on a read only, attorneys' eyes only basis. And so the ability -- the independent investigator at this moment does not have the ability to share those documents with the committees.

If an agreement can be worked out with AAFAF, and I expect that Mr. Sushon will be presenting to you next, whereby a process can be developed and agreed upon through which the documents can be shared by the independent investigator with the committees, I'm sure that the independent investigator will be willing to do that.

HONORABLE MAGISTRATE JUDGE DEIN: That's a lot of documents to have attorneys' eyes only for.

MR. MUNGOVAN: I understand.

HONORABLE MAGISTRATE JUDGE DEIN: I'm having a hard time wrapping my head around that one.

MR. MUNGOVAN: I understand. I'm going to defer the explanation of that position to Mr. Sushon.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. MUNGOVAN: But I believe right now the independent investigator is constrained by that restriction. And in order for it to be able to accomplish its investigation, it has to live within the restrictions that are

being placed upon it by the parties from whom it is seeking to obtain documents, which is a good segue to category three.

Category three, first of all, is not technically the subject of the UCC's motion, as I read their motion. The motion is directed toward the Puerto Rico financial institutions, which are comprised of three effectively, Popular, Santander and the GDB, as I read their motion.

With respect to the other parties, in an effort to expedite the investigatory process, as I have been informed by the independent investigator, they have sought to do things on a voluntary basis with the parties, the third parties with whom they are interacting and they're seeking information, rather than serving a Subpoena.

If a Subpoena is served, there won't be a restriction on the independent investigator to share documentation, or they won't have to obtain the producing party's consent to sharing. The fact is, I believe, that many of the producing parties, perhaps all of the parties in what I'll call the third category, have not consented to the independent investigator's request to share those documents with the committees.

Here's -- I believe that there is a path forward with respect to this, this particular issue, and maybe all of these issues, Your Honor, which is that the independent investigator expects to file its final report and an exit plan. And as

part of that exit plan, the independent investigator will indicate, I anticipate, that it has created a document repository.

And that document repository is a resource that will be available to a party to request permission of the Court to obtain access to. And to the extent that a party objects, a producing party objects to their documents being made available, that is an issue that will be joined before this Court.

In my view, Your Honor, giving the time scale that we're talking about, which is a couple of months, first of all, these documents aren't even subject to the UCC's motion I believe fairly read.

And secondly, on a time scale basis, allowing this process to play out where the independent investigator finishes gathering documents from parties, particularly on a voluntary basis, targeting August to complete that process, targeting August to finalize that document to repository, and making a process available with the Oversight Board and the committees to allow the committees to pursue those documents in that repository. That to the Oversight Board, Your Honor, is a far more efficient and effective and expedient path to address the committee's concerns at this point in time.

HONORABLE MAGISTRATE JUDGE DEIN: So why is that different, though, than his request to sit down on August 15

and spell out exactly what you're producing, when you're producing it, and what hasn't been produced?

MR. MUNGOVAN: I think that there's room for both, Your Honor. I think that we can -- for the Oversight Board, we're more than happy to sit down and have sat down with Mr. Despins and the committees.

But what I would say is the one sensitivity that I have on this relates to the agreements that the independent investigator has or may have with those parties, the third category, who voluntarily produced the documents. I don't know what the terms of that voluntary production are.

And so I don't know whether there is a limitation upon the independent investigator sharing with, or the Oversight Board sharing with the committees the list of who the producing parties are and the scope of the documents that were produced with them. I just don't know what those restrictions are or may be.

HONORABLE MAGISTRATE JUDGE DEIN: So this is my problem. As I understand it from some of the papers, there's been a lot of discussion about who's producing documents, about who's being interviewed. I mean, all of that has been discussed according to the representations, what the independent investigator's doing. But then the results of the interviews, the results of the document requests are not being shared.

So I don't want to end up in August with the beginning of a fight over what should be produced or not. The report itself, assuming it comes out on August 15, and assuming it identifies claims, if it hasn't allowed the committee to see at least some of the substantive underlying documents, then it doesn't have credibility. And then we're just stalling this for another couple of months.

And I accept the concern of the May 2019 date. I think that's real.

MR. MUNGOVAN: Let me address both of those points. First, the May 2019 date, that's an issue for the Oversight Board, at least in the Oversight Board's position and view, because those claims belongs to the debtors, not to the Committee.

And secondly, with respect to your first issue, which is the concern about having a disagreement in August, the disagreement is not going to come from the Oversight Board I don't anticipate, Your Honor.

To the extent that there is any disagreement about access to the documents that are in the depository relating to the third category, or potentially the GDB, depending on what Mr. Sushon tells us, that will be an issue between the Committee, or committees, and the producing party, as to whether or not the producing party's documents should be made available to the committees.

HONORABLE MAGISTRATE JUDGE DEIN: But then I end up on August 15 and I say okay, so issue a Subpoena. I mean, how do we make this conversation happen without that?

MR. MUNGOVAN: That may be, Your Honor, but what I would tell you is my understanding of the independent investigator's concern is that if you mandate that -- if you take the position that those documents must be turned over in some way, it could interfere with that investigation.

And what I would say to you is that the independent investigator needs to be free to pursue the path that it is pursuing, unhindered by imposition by a committee to evaluate the documents that the independent investigator has collected, where the independent investigator has made the decision that it is more expedient and more efficient and more cost effective to work voluntarily with the producing parties to produce documents on a voluntary basis.

HONORABLE MAGISTRATE JUDGE DEIN: All right. So your proposal then is on August 15, we'll take that as a date there would be an exit proposal that says that these are the following materials that will be turned over that have not been turned over as of now. These are the materials that you will not have access to because I couldn't get you access to it. And you, Committee, file a motion to compel or seek the 2004 authorization at that point.

MR. MUNGOVAN: Yes. I think something like that.

And depending on what Your Honor orders as a result of this motion today, it will likely give guidance not only to the committees, but also the producing parties as to what the -- what the most direct path is.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

MR. MUNGOVAN: Thank you, Your Honor.

MR. SUSHON: Good afternoon, Your Honor. Bill Sushon from O'Melveny Myers on behalf of AAFAF.

I should start out by saying that we join in Mr. Mungovan's arguments and we support the positions expressed by the Oversight Board.

I want to start, if I may, by clearing up a misapprehension that I believe the UCC and Retirees' Committee are laboring under, which is this: The documents from GDB are GDB's documents.

They're not AAFAF's documents, and AAFAF has done nothing to interfere with sharing those documents with the investigator or with the committees. AAFAF has been working diligently to try to secure GDB's permission to share those documents. And that has borne fruit, although maybe not the fruit that everyone would have liked.

As of right now, the investigator is receiving documents from GDB on an attorneys' eyes only basis, subject to execution of an NDA that will be acceptable to GDB and the investigator. I, today, while we were sitting here in court,

received permission from GDB to provide non-privileged documents to share with the investigator, to the UCC and the Retirees' Committee on an attorneys' eyes only basis, again, pending execution of an NDA that's acceptable to GDB and to the committees.

But that's all been work that AAFAF has been doing to try to get cooperation and to try to get the information out there, because as I've told this Court before, our position is that transparency is precisely what's needed here, and we support a transparent investigation.

HONORABLE MAGISTRATE JUDGE DEIN: So what can I do to make this NDA get signed sooner rather than later?

MR. SUSHON: That I don't know, Your Honor, because I don't represent GDB. I don't know what the issues are that are creating any concerns on their part.

HONORABLE MAGISTRATE JUDGE DEIN: So who knows? The independent investigator knows what the issues are?

MR. SUSHON: I don't believe so, Your Honor. I think that would have to be GDB. I --

HONORABLE MAGISTRATE JUDGE DEIN: I'm feeling a little bit like I'm chasing my tail around.

MR. SUSHON: I understand, Your Honor. I'm just not authorized to speak on behalf of GDB, and so I can't express that. But that is what we have been doing. That is what we can do today so we can at least get the committees the

documents that the investigator has that are non-privileged.

They can begin reviewing those documents. It can help them if they do think that there are deficiencies in those document productions. It can help them then begin to work on whatever follow-up request they may have. And they can bring those through the investigator while the investigation is ongoing.

If when the investigation is done they're still not satisfied with the document productions, then they can take whatever other steps they think are necessary to get the documents that they need. But this is at least a very good first step to get beyond the log jam that we've been in and to get them some of what they need.

HONORABLE MAGISTRATE JUDGE DEIN: Just so I understand, what you're saying is that the documents can be produced tomorrow attorneys' eyes only, but you're -- somebody's negotiating a non-disclosure agreement which would free up some of those documents beyond attorneys' eyes only?

MR. SUSHON: That's correct, Your Honor. And I believe that needs to be approved by the GDB board.

HONORABLE MAGISTRATE JUDGE DEIN: All right. And then do you know whether they're producing a privilege log?

MR. SUSHON: There is not a privilege log as of now, but they would be, I believe, willing to produce a privilege log to the UCC.

HONORABLE MAGISTRATE JUDGE DEIN: All right. And as I understand it, the other financial institutions did produce a privilege log, and the privilege log was produced to the committee?

MR. SUSHON: I don't know the status of that.

MR. DESPINS: No privilege logs were produced -- was produced.

HONORABLE MAGISTRATE JUDGE DEIN: Well, as I understood -- I'm going to make you all file one brief just so they all say the same thing.

MR. SUSHON: That could be a real punishment, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: I gather. I think that if there's a privilege log out there, it ought to be produced to the Committee.

MR. SUSHON: As of right now, there's not a privilege log for GDB, Your Honor. That I know. But I believe that they're willing to prepare and produce a privilege log.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. SUSHON: I have only one other thing to add, and that's this. It wasn't raised today during argument, but in the UCC's reply papers, they made insinuations about AAFAF personnel and that AAFAF personnel are somehow incentive to obstruct the investigation because of their prior employers being potential targets of the investigation.

I feel obligated to say that, first of all, that's completely speculative. There are no facts offered. There's no evidence offered. The concern is expressed specifically about --

HONORABLE MAGISTRATE JUDGE DEIN: Let me just suggest that that's not a persuasive argument if you're not turning over the documents.

MR. SUSHON: Well, but again, they're not AAFAF's documents, Your Honor. And that's the other point, is that the AAFAF executive director is named in particular, but his former employer isn't GDB. His former employer is one of the other banks.

So what possible reason he could ever have to interfere with the production of GDB documents to protect some other bank that's not GDB is a mystery to me. I don't understand it.

In any event, again, AAFAF has been working very hard to get this done, and will continue to do so.

HONORABLE MAGISTRATE JUDGE DEIN: I appreciate that. What I do need to help figure out, and I will hear from everybody else as well though, everybody agrees the GDB documents are critical. I need to figure out how we get those produced, how I get the right people in the room with authority to negotiate whatever we need to negotiate.

And if the non-disclosure is too restrictive, I need

to weigh in on that and see what happens at that point. But I can't have everybody in front of me saying, I'm not the one that has the authority to do that. So I'm trying to figure out the best way to get the right people in front of me.

MR. SUSHON: At this point, Your Honor, I think one possibility would be simply to have a status report at the next Omnibus hearing, at which point if things haven't been achieved, then, you know, some relief could be considered, some motion, something that would get the right people in the courtroom, if necessary.

HONORABLE MAGISTRATE JUDGE DEIN: Okay.

MR. SUSHON: Thank you, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: Anyone else?

Yes.

MR. DORSEY: Good afternoon, Your Honor. John Dorsey of Young, Conaway, Stargatt & Taylor. I'm here on behalf of Banco Popular.

I don't want to belabor any of the arguments that have already been made. Obviously we filed our objection to the motion, but I wanted to just assure the Court that we are cooperating with the independent investigator.

We have been producing documents. Our employees have been interviewed. We've been producing documents since December of last year. And there's an ongoing dialogue with the independent investigator. They continue to ask for

documents.

And we're in the process of reviewing additional documents now that were prompted by the interviews that they conducted of our employees. So we just wanted to let the Court know that we are cooperating completely.

HONORABLE MAGISTRATE JUDGE DEIN: And as I read your papers, you have no objection to those documents being turned over to the committees?

MR. DORSEY: That's correct, Your Honor. We understood they were being turned over to the committees.

HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

MR. RAIFORD: Good morning, Your Honor. Landon Raiford of Jenner & Block for the Retiree Committee. I think the answer, as we see it, to the middle ground that we advocate is require GDB today to make available to both committees the documents they have made available to the investigator. And to the extent they have concerns over sensitive issues or attorney eyes only and that sort of stuff, we already have an agreement with the investigator that governs how these documents can be used and based on various labels that have been placed on them.

It's a little frustrating to hear that for months now, every time we have these discussions, it's with AAFAF about these very documents. So now here today in court they throw their hands up and say well, it's not us; what are we

supposed to do. If so, where is GDB's counsel today? Where are they to explain their position if they're the only ones who can push this forward?

We think this is some of the smoke and mirrors. We have and the other committee has for weeks and months tried to get an NDA agreement with AAFAF, and heaven and earth may pass away, but AAFAF is never going to sign one without this Court intervening.

So we think again, you don't have to give the UCC committee or our committee full fledge authority to go pursue Rule 2004 discovery. We believe that if we wait until the report is issued in August, but yet we all have access to the documents that were given to the investigator, and that are governed by the NDA that we have already entered into with the investigator, then pretty much all of these problems can be resolved.

HONORABLE MAGISTRATE JUDGE DEIN: Do you make a distinction between the third category of non-financial institution documents and GDB?

MR. RAIFORD: We do a little, and the reason we're not as concerned about the third category is because our conversations with the investigator is that those documents, the plan is that they will be put in a database, and that we can, as soon as the report is issued, seek access to those documents.

So we think that those -- again, things can change. If I understand this presently, the way it's supposed to work is those documents will be in the database and hopefully there won't be a problem.

The problem we all admit we have is with GDB, who refuses to let us see literally anything.

HONORABLE MAGISTRATE JUDGE DEIN: So if I need to find out information from the investigator as to really what's going on with whether the documents will be put in the database or not, how does that happen? Who's going to represent him?

MR. MUNGOVAN: Good afternoon, Your Honor. Timothy Mungovan for the Oversight Board.

So I believe that the independent investigator reports to the subcommittee of the Oversight Board. I've told you that based on my discussions with the independent investigator yesterday, or counsel for the independent investigator at Kobre & Kim, that their expectation is that they plan to put the documents that they have collected and gathered into the document repository, a data room. And as part of the exit plan, inform the Court that those documents are in the repository.

HONORABLE MAGISTRATE JUDGE DEIN: And identify the restrictions on use on those documents?

MR. MUNGOVAN: Meaning that the -- is the question

will the independent investigator identify which documents are restricted in terms of use? That seems like a reasonable request. I'm happy to communicate with the independent investigator about that, but that seems like a reasonable thing to do, or at least have segregated subrooms in the data room, that these documents are available to the committees.

I don't think that there's any issue with respect to at least two of the Puerto Rico financial institutions as that term is defined. It sounds like the GDB may be worked out, or hopefully.

And we're talking about the third category, which is the non-Puerto Rico financial institutions. And I'm sure that we can figure out a way to identify who those parties are and the restrictions on access, so that the committees can make a determination as to whether they want that information, and to establish a basis to obtain it.

HONORABLE MAGISTRATE JUDGE DEIN: It seems to me that I need to know from the investigator, one, is there any problem sharing search terms and having that conversation about appropriate search terms? Are there any custodians?

All right. I need to know the status of the negotiations with GDB, and I'm not going to wait until the next Omni to have any non-disclosure agreement resolved. So I don't quite know the way to do it, but maybe it's the investigator who needs to talk to the committees, because

documents -- all right. The Retiree Committee lawyer is now given permission to speak, even though you're not admitted pro hac vice. Thank you.

Is that enough?

LAW CLERK: And Santander.

HONORABLE MAGISTRATE JUDGE DEIN: All right. And we'll need to hear from New York in a minute.

MR. MUNGOVAN: What I might suggest, Your Honor, and it just occurred to me that counsel for the Retirees' suggestion with respect to GDB makes sense.

To be clear, in my view, I don't believe that it's the burden of the independent investigator to act as an intermediary with respect to the terms of the NDA. I believe that they're happy to facilitate that discussion between the committees and GDB. But the independent investigator is doing its job under the context of PROMESA.

To be clear, the independent investigator is also aware that their ability to share at the request of the Oversight Board with the committees as a matter of efficiency is something that makes sense to avoid having duplicative discovery. But I want to be careful with acknowledging or accepting some burden on the part of the independent investigator that I don't think I can do.

So I reiterate that maybe the path forward with respect to GDB is for the committees to communicate directly

with GDB. Perhaps the commentary from the bench today may act as a catalyst to GDB to work together with the committees to come to an acceptable NDA that I'm sure will also be acceptable to the independent investigator, and we can report back to the Court perhaps by the end of next week.

HONORABLE MAGISTRATE JUDGE DEIN: Yes. I think what -- I think that makes sense, but I also think I'll schedule something in Boston in about two weeks -- I don't have my calendar with me -- that GDB will have to be present at. All right?

So it will be sort of the 2004 against GDB, and at least I'll have the right parties there so that we can figure out what to do with how fast those documents can be produced. They're going to be produced. I mean, you can tell GDB that. I just want to make sure they're represented and have counsel at the hearing, and then we will figure out how fast to get them.

But I accept counsel's representation that at least all the documents will be available to both committees on an attorneys' eyes only basis tomorrow, okay?

I have some nods at me.

MR. SUSHON: Yes, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: Do we have someone in New York?

MR. CROWELL: Yes, Your Honor. This is Nick Crowell

from Sidley Austin representing Santander, and I'll be very brief.

I just wanted the Court and the parties to know that Santander is fully cooperating here. It has nothing to hide. It's produced tens of thousands of pages of documents. We provided current and former Santander employees for interviews. And I believe that all that information we produced has already been made available to the UCC and the Retirees' Committee of which we have NDAs.

We will continue to cooperate with the investigator and we will probably be producing some more documents. And obviously when those documents are made available to the investigator, my presumption is that they'll also be made available to the UCC for their guidance.

Thank you, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

MR. DESPINS: Your Honor, just a few clarifying points. You have not heard a word about August 15 from anyone. Just make sure that's very clear.

That date, I've had to put some money on it, is not happening. I hope I'm wrong, but you have not heard a word about that, and that was not an accident.

And on the issue of we have not raised the search term, it's on page eight of our Reply. We had various e-mail communications with the investigator asking for search terms,

so that issue has been front and center for a long time.

Then the issue of -- you know, Mr. Sushon is playing a very dangerous game. He has been negotiating with us the terms of that NDA for the last four months. That is illusory. I have e-mails going back and forth between me and him and Mr. Friedman negotiating the terms of that GDB, and now he says oh, we don't represent them.

By the way, why is there not a default judgment against GDB? Because we filed a motion. They're not here. Let's get the default judgment entered. I mean, this is, Your Honor, very troubling.

HONORABLE MAGISTRATE JUDGE DEIN: So does it make sense then to have a continuation of the hearing with GDB present, and we just at that point wrap that up?

Mr. DESPINS: Yes. And if they're not there, then whatever happens with that. But the next point, Your Honor, is the other parties. And they're saying, well, we haven't filed a motion about that. We can do that.

We can also serve a Subpoena on the investigator saying produce all the documents you've received. And then he can come to Court saying, I can't do that; I have a confidentiality agreement. And then Your Honor will resolve that.

I can't believe that's the game we're playing, because we have filed the motion, so -- there are other

entities, and by the way, they're numerous. They're big banks in New York that were involved in this. And they're saying, well, we're not going to give you those documents because that's not covered by your motion.

The state is paying for that investigation. We should have access to it. And if the third parties are opposed to that, they can come to the Court and explain why we should not have access to those documents.

And by the way, the fact that that would interfere with their investigation, Judge, we're talking about documents, not witnesses. So how is it that us seeing the documents will interfere with the investigator's investigation? We just don't see it.

But all in favor of keeping this on a short leash, that's the only way this is going to move forward.

MR. MUNGOVAN: Your Honor, two things. First of all, with respect to the scope of the motion, I'm just responding to the motion as written with respect to the third category of documents. We're responding to the motion as written.

If the committee wants to seek categories of documents from third parties, I think we've laid out a process for them to get access to those documents. Let's be practical.

And then with respect to the search terms, I was reviewing e-mail that I had received over the weekend in my

folder. And what the note that I have from my team states is that the independent investigator invited the committee to provide proposed search terms for Popular and Santander, and expressed a willingness to pose such search terms to these witnesses. The Committee never provided such terms.

So that's not necessarily responsive to the criticism that has been levied now with respect to what search terms were, in fact, used. It's a fair point, Your Honor.

I will go back. I will talk to the independent investigator about that. I hear you loud and clear that you want, if possible, those search terms to be shared and the custodians. If there is a problem with doing that, I will report back.

HONORABLE MAGISTRATE JUDGE DEIN: Okay. So why don't we say within the next week, you will have that conversation and somebody will file a status report with me to let me know. I guess you will.

MR. MUNGOVAN: (Nodding head up and down.)

HONORABLE MAGISTRATE JUDGE DEIN: To let me know what the status of that is. I also want to know the status of this third category. Are there really -- I don't know what the agreements are. Are the agreements -- I guess by August 15, I'm using that date, you're going to have to convince me it's wrong, if it's wrong.

But by August 15, the committees need to know what's

in the room, what the form is. I guess the investigator needs to spell out the exit plan in a filing that we can actually look at.

MR. MUNGOVAN: That's my understanding, that there will be an exit plan or an exit report that will be filed that is separate from the final report. I don't know that the exit report will be filed by the 15th of August.

I am told -- I don't have personal control over it, but I am told by counsel for the independent investigator that they currently anticipate, as stated in our filings, that they will file a final report by August 15, 2018.

HONORABLE MAGISTRATE JUDGE DEIN: But I want the exit plan by then.

MR. MUNGOVAN: You want the exit plan by the same date?

HONORABLE MAGISTRATE JUDGE DEIN: I actually want to know what's going to be in the exit plan before that, all right? I want to know that there's going to be a plan that says that the documents will be in a room, when access will be available to them.

The overarching thing that I wanted to say is that the Committee is going to get these documents. All right? Because I'm not going to end up in a fight about whether investigations are duplicative because the Committee doesn't know what documents have already been produced.

The whole point of this was so that the financial institutions didn't have to do the same searches multiple times. All right? But the Committee can't be in a position of saying I want these documents, and then not knowing whether or not they've been produced.

So that's not a fight I'm willing to have. And if I have to just open the doors to make sure it doesn't happen, I will do that.

MR. MUNGOVAN: I understand, Your Honor.

THE COURT: All right. So I think the privilege logs need to go over to the committees, to the extent they exist, and there needs to be a privilege log from GDB.

You need to have these conversations about custodians and search terms and make sure that that's done. I need to know what the status is of the third category. Is it expected that those documents will be released at the exit date, or is it expected that they will still be confidential at that date?

MR. MUNGOVAN: My understanding is that they will be -- to the extent that they are restricted by the producing party, they will be held as confidential. The independent investigator will be withdrawing, as I understand it, subject to the exit plan. And the Oversight Board presumably will have control over those documents.

But my understanding is that there will be -- at least in some instances, as of today, there are restrictions.

Whether those producing parties lift those restrictions voluntarily remains to be seen.

HONORABLE MAGISTRATE JUDGE DEIN: Is there any concern that you have about disclosing the identity of the parties that have produced the documents?

MR. MUNGOVAN: I don't --

HONORABLE MAGISTRATE JUDGE DEIN: That is something that you need to talk to the investigator --

MR. MUNGOVAN: I don't know, Your Honor. Yes, let me speak with the investigator's counsel. I don't know. To some degree, I'm in a difficult position, to be honest with you, because I'm functioning frankly as an intermediary as well. But I'm trying to be as direct and honest with you as I can.

I don't know whether that is information that can be shared. If it can be, I will work to make that clear to you and to the committees.

HONORABLE MAGISTRATE JUDGE DEIN: All right. So I think the way that we're leaving this is you'll have the conversation with the investigator and with the committees and file a status report in the next week. Does that make sense?

MR. MUNGOVAN: Yes, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: And then in two weeks, I will issue a continuation date for a hearing with GDB to address those documents, all right? And then I will take the remainder of it under advisement based on what I have here

and formulate the next steps.

MR. MUNGOVAN: Thank you, Your Honor.

HONORABLE MAGISTRATE JUDGE DEIN: The goal will be, though, that this is moving. Okay? And that the documents will be reviewed.

On the other side, though, when we get to the I want more stage, which I know will come, that's actually going to have to be fairly identified as to what's needed, why, and probably some budget on what the additional search will involve. Okay? And I'll put that in an Order as I finalize this.

But that's going to -- assuming that the committees get all of the materials that have been -- or substantially all the materials that have been produced, the more the investigation is going to have to be targeted. Okay?

And again, I understand that there may be very different goals in the investigation, and I don't have a problem with different goals, but I think there is a finite world of information that people will use differently.

So the fact that the investigator's goals may be different doesn't mean that an entirely new search takes place, if the same documents have been produced, and just focus -- the focus of the documents are different. Okay? Does that make sense?

I have sort of some nods on that note.

MR. SUSHON: (Nodding head up and down.)

MR. ROSEN: (Nodding head up and down.)

HONORABLE MAGISTRATE JUDGE DEIN: And I think I should leave.

Is there anything else?

MR. SUSHON: (Shaking head from side to side.)

HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

(At 2:10 PM, the Honorable U.S. District Court Judge Swain took the bench.)

THE COURT: Please be seated.

Our final contested agenda item is the joint application for entry of an Order amending the Interim Compensation Order.

Mr. Sushon.

MR. SUSHON: Good morning, Your Honor. Bill Sushon of O'Melveny & Myers for AAFAF.

I'm happy to report that I think we can move this to the uncontested category. And I'll explain that in a moment, but first I thought it would be helpful to get some background on the reasons behind the proposed amendments.

Aside from housekeeping issues, the proposed amendments are designed primarily to ensure that people seeking payment from the Puerto Rico Government Treasury are complying with Puerto Rico law.

The reason for that isn't that we think that the

Court's Order is insufficient to require payment to the professionals. It's really because we have taken to heart the concerns that have been expressed over the timing of payments and of payments being delayed.

Everyone has experienced delays in payments, including my firm, you know, some of them very lengthy. And a big part of the reason for that, Your Honor, has been that the Treasury, when it is processing payment requests from professionals, has policies, procedures and systems that are set up to ensure compliance with Puerto Rico law, because the payments have to be made typically in compliance with Puerto Rico law.

So as soon as you have a situation where there's a variation from what is typically done in Puerto Rico, that requires people to understand the reasons behind it, to get themselves comfortable with it, for the employees to feel comfortable that they're not going to be subject to criminal prosecution for processing a payment that doesn't check the boxes for Puerto Rico law.

We also think that providing the things complying with Puerto Rico law provides greater transparency. Given that these payments are coming from Puerto Rico's Treasury, we believe that the taxpayers and the people have a right to transparency to see the arrangements that are in place and so on. So that is what motivated the amendments.

We had one objection from the UCC professionals, and I believe that we have resolved their concerns in this way. There was a concern about tax withholding, and that all of their payments would be subject to automatic tax withholding by Puerto Rico.

There is a process that -- we've spoken to the IRS. There is a process that allows anyone who's making an application for payment from the government, or to any other part of the government, to certify to the payor that they are not doing business -- the person seeking payment is not doing business in Puerto Rico, at which point the payor no longer has the obligation to withhold Puerto Rico tax.

So that would eliminate any withholding from the professionals' payments. The professionals could still be liable for tax. That's on them. They need to figure that out with their own tax professionals.

But if the government gets those certifications from the professionals, then there will be no tax withholding from their payments. And with that, I believe that the UCC's professionals will withdraw their objection.

THE COURT: May I just ask a question just for clarification?

MR. SUSHON: Yes, Your Honor.

THE COURT: So I may have overread the objection, but there also seemed to be buried in the -- well, not so buried,

in the objection a contention that the retention arrangements entitled those professionals to be grossed up for any actual tax liability. That it wasn't just a withholding issue that was being raised at the end of the day, but a gross up issue. Am I wrong about that or have you resolved that?

MR. SUSHON: That issue was raised in the objection. It isn't frankly squarely implicated by the amendments to the interim compensation order, which merely provides that the professionals need to be in compliance with Puerto Rico tax law.

So, you know, that's the requirement, but I'll leave it to Mr. Despins to explain their position and if there is any continuing objection.

MR. SUSHON: Thank you.

THE COURT: Thank you.

MR. DESPINS: Thank you, Your Honor. Luc Despins with Paul Hastings on behalf of ourselves and Zolfo Cooper and the Casillas Torres firm.

But we don't need to pursue that issue now, meaning that we can table that. We're satisfied with that representation that once we submit that certification, there will be no withholding, and we remain subject to whatever tax we have to pay.

The only clarification I would add is that they've already withheld 29 percent from our fees. And so upon

submitting that certification, that those fees would be paid promptly by the government. Subject to that, you know, I think that resolves it.

MR. SUSHON: Your Honor, just one further clarification. The certification would need to provide not only that the payee is not doing business in Puerto Rico, but also that the work was not performed in Puerto Rico. So it's a two stage --

THE COURT: And so with that certification, it is your expectation that it will be given retroactive effect so that the monies that have previously been withheld will be refunded?

MR. SUSHON: Yes, as long as the certification is given for past payments as well as for -- when each payment is sought in the future.

THE COURT: Very good. I thank you and congratulate you for having resolved the objection to this Order.

And there was an amended version of the Order that was filed last night that seemed to be directed to PREPA professionals in particular.

MR. SUSHON: That's correct, Your Honor.

THE COURT: And Mr. Despins had raised I think in his objection an issue about the literal requirement of the filing of an engagement letter saying that for professionals who are retained pursuant to Orders, there's not an engagement letter.

So this is a roundabout way of saying, am I going to get another proposed amended form of the Order with tweaks to deal with that sort of issue, or can I go ahead and enter the Form of Order that was filed yesterday?

MR. SUSHON: You can enter the Form of Order that was filed yesterday.

THE COURT: Mr. Despins, you can just nod.

MR. DESPINS: (Nodding head up and down.) Yes. Yes, Your Honor.

THE COURT: All right. Mr. Despins has nodded and said yes. So I will do that and I thank you.

MR. SUSHON: Thank you, Your Honor.

THE COURT: And so in items Roman V and Roman VI of the agenda, the matters that are adjourned and/or carried over to the July Omni are specified. And unless anyone else has an issue to raise? I see no hands here or in New York.

So this conclude today's agenda. As of right now, the next scheduled hearing date I believe is June 22nd in Boston in connection with a 2004 application issue. No?

LAW CLERK: That one came off.

THE COURT: That one came off, so it's not.

HONORABLE MAGISTRATE JUDGE DEIN: Maybe we'll fill it up again. We'll see.

THE COURT: Yes. It will morph into something else.

So as of now, we'll be back here in San Juan for the

next Omnibus on July 25th. And I want specifically and wholeheartedly to thank the Court staff here in Puerto Rico and in New York for their professionalism and all of the work that they do constantly to support these proceedings, and particularly the work that has been undertaken in preparation and support of today's hearing.

I thank all of you for your presentations and advocacy. I wish you all well and safe travels for those who are traveling.

We are adjourned. Take care.

(At 2:19 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 138 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain and Honorable United States District Court Magistrate Judge Judith Dein on June 6, 2018.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter